# The Solicitors' Journal

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## Current Topics.

### Reasons for Decisions: Duty of Justices.

ATTENTION should be drawn to a statement made on Tuesday by Sir BOYD MERRIMAN, P., who, with HENN COLLINS, J., was hearing appeals from courts of summary jurisdiction in a Divisional Court of the Probate, Divorce and Admiralty Division, and emphasised the importance of justices supplying reasons for their decisions. According to the report in *The Times*, the learned President, in remitting a case to a court of summary jurisdiction, said that he did not know how many times it had been laid down that it was necessary for justices not merely to make a decision but also to furnish their reasons. The justices must have had reasons for their decision, and it was the duty of their clerk to provide the Divisional Court with a statement of what those reasons were.

### Unofficial Law Lists.

IN the current issue of the *Scottish Law Review* there is an interesting article on the subject of law lists, particularly those published in the United States where it appears the issue of worthless law directories had assumed such dimensions as to constitute a real nuisance. To deal with it the American Bar Association, a year or two ago, appointed a committee to consider the position and to suggest a remedy. As a result thirty-four American law lists and ten foreign law lists were approved, and, still further to mark their disapproval of illegitimate publications, not a few of which sought to appeal for support by entries in bolder type for which, of course, an additional charge was exacted, it was decreed by the association that it would be deemed improper, professionally, for an American practitioner to permit his name to appear in a non-approved list. In this country we have an excellent "Law List," which, as the years go by, noticeably grows larger and larger, thus reflecting the ever-increasing vogue of the lawyer.

### Costs or Expenses.

ON one occasion a very learned judge of a bygone generation, gifted with a keen sense of humour, after having stated his views on the legal questions which had been in controversy, concluded thus: "And now we come to the real merits of the case, the question of costs." Delightful to the successful counsel and solicitor, not to speak of the clients, are the words "with costs," while to their opponents they naturally carry a sinister connotation. In Scotland, where doubtless the like diverse feelings are evoked at the conclusion of the hearing, the word "costs" has recently been the subject of controversy in the professional journals. There, the term "expenses" is in general use as the synonym for our "costs," and some very sturdy Scots lawyers keenly resent its partial supersession by the invasion of the term "costs," and have said so in fairly vigorous language. It now appears, however, that on not a few occasions even the judges of the Court of Session have employed the word "costs," where their predecessors spoke of "expenses," but even this has failed to placate the objectors. It is a pretty quarrel but like many another with little substance in it.

### Charitable Collections.

DURING the consideration on Report in the House of Lords on 13th July of the measure until then known as the Charitable Collections (Regulations) Bill, a change of title was approved to the House to House Collections Bill. In moving a consequential amendment, the EARL OF COURTOWN stated that by the change of title people would be able to understand more readily to what the Bill referred than would have been the case if the title were left with the wider meaning it originally had. Other amendments approved make it clear that the term "remuneration," which in its original context suggested that it had reference only to monetary reward, covers valuable consideration of all kinds. LORD LUKE, whose previous efforts to secure exemption from the necessity of obtaining a police licence for collections relating to voluntary hospitals were,

as has been duly observed in these columns, unsuccessful, obtained approval to an amendment giving a right of appeal on refusal or revocation of a police licence to the Home Secretary. VISCOUNT BRIDPORT recalled that he had explained in committee the reasons why the Government thought that an appeal to the Secretary of State was not necessary. During the debate in committee certain of their lordships who spoke for the voluntary hospitals had, however, revealed considerable uneasiness that there was no such appeal, and in order to remove the fears so expressed the Home Secretary was prepared to agree that his department should undertake the duty proposed in the amendment. In these circumstances the EARL OF COURTOWN indicated that he had no objection to offer on behalf of the promoters of the Bill. In moving certain other amendments, which need not be particularised, LORD LUKE intimated that their object was to provide that charities about to be placed on the favoured list would have to produce their accounts and show the proportion of expenses to collections and, as it were, qualify for exemption from the Home Secretary in the same way as the hospitals would have to do before the local police authority. LORD LUKE hoped that these amendments would restrict the number of charities on the national exempted list, and to that extent make the hospitals freer of competition in their own localities, and that the Home Office, when placing charities on the exempted list, would make sure not only that these charities were capable of collecting all over the country but that they were giving real service in each of the areas in which they might appeal from door to door. VISCOUNT BRIDPORT observed in regard to the amendments, which were accepted, that it had always been intended that the "national" charities should furnish the Secretary of State with information corresponding with that which the local charities would be required to furnish to the police authorities, and that the provision contained in cl. 3 (2) for the revocation of exemptions in these cases would give the Secretary of State all the power needed for that purpose. The joint committee, had, however, recommended that exempted charities should be required to comply with all the regulations affecting the actual conduct of the collection and the Government did not, it was intimated, wish to raise any objection to this point.

## The War Risks Insurance Bill.

THE War Risks Insurance Bill was read a second time in the House of Commons on Monday. Mr. OLIVER STANLEY, President of the Board of Trade, who moved the second reading, explained that the measure only dealt with one instalment or part of the losses which might be incurred in the event of war and only provided a solution for that part. The object of the Bill was to cover by various schemes of insurance ships, cargoes in ships, and commodities on land. Part I deals with reinsurance of King's Enemy Risk in marine insurance. It does not lay down any particular system or method of reinsurance, but empowers the Board of Trade to enter into agreements in order to effect reinsurance and to lay agreements before Parliament. The Government's plan, it was said, was that in the pre-emergency period the associations named in the agreement would reinsure with the Government up to 80 per cent. of the value of the ships. This reinsurance would cover King's Enemy Risks for all ships which were covered by them. Each vessel would be covered without premium in respect of a voyage at the time the emergency occurred. After that, when the emergency did occur, the rate of premium would be charged by the Government to those associations for reinsurance, and the associations would not be entitled to charge members a rate of premium higher than that charged by the Government. The same Part of the measure empowers the Board of Trade to undertake insurance for war risks and King's Enemy Risks for ships' cargoes and goods in transit either in peace or war, and deals with the insurance of cargoes in transit after discharge or before shipment. Part II is concerned with the insurance of commodities, and relates to persons carrying on business as sellers of goods. There is an exception with regard to agricultural commodities. In peace time, Mr. STANLEY indicated, there would be a scheme of registration, and any person within the scope of the scheme would be able to register with a Government agent, who would normally be the fire agent with whom he ordinarily did his fire business. When an emergency occurred, a person who had gone through the process and was registered and had paid the fee would be held to be covered immediately for the first three months, and immediately would be liable for three months' premiums at the rate of insurance which was then declared. The scheme would be voluntary, but the Government had taken powers in the Bill to make insurance compulsory in time of war.

### Insurance of Fixed Property.

THE President of the Board of Trade dealt with the different considerations affecting the problem of providing insurance relative to fixed property. One of these was that the field to be covered was "immeasurably greater." It was, he said, obviously quite impossible to give accurate figures, but he had some estimates which would give the House a fair picture of the difference between the two. Under Part I of the Bill the capital value of the ships to be insured was about £250,000,000. The cargoes afloat at any one moment they could, by a process of calculation, put at something about £65,000,000, and the goods to be insured in transit between ship and warehouse at about the same amount. The best estimate he could give of the value of the commodities within Part II of the Bill was in the neighbourhood of £2,000,000,000, making a total of £2,380,000,000. As against that, the value of house property alone was estimated to be about £10,000,000,000, to which had to be added an indeterminate figure representing fixed properties like machinery, furniture, and so on, for which there were no reliable figures, but which probably could not be very much less than the figure for the commodities themselves. There was, therefore, something in the neighbourhood of £12,000,000,000 to be insured. Mr. STANLEY went on to deal with other aspects of the problem, and stated that the Chancellor of the Exchequer had asked the Financial Secretary to the Treasury to convene, on behalf of the Government, a conference of four or five gentlemen of recognised ability, and to ask them to examine the practicability of evolving any scheme for mutual protection against risk of war damage to fixed property in private ownership, excluding the subjects covered by the Bill. The Government, he said, must maintain the view that no scheme could be acceptable which would promise to provide an unlimited amount out of public funds for compensation, and the object of the inquiry was to examine any suggestions that might be made consistently with this essential condition. If a practical scheme could be evolved, it would not necessarily be rejected by the Government merely because it involved some Government contribution of a reasonable and ascertainable amount. It was indicated that one of the points on which the conference would be asked to advise was whether participation in any scheme it thought proper to recommend should be compulsory on all property owners or whether it should be voluntary. The day-to-day proceedings of the conference would be confidential, but, when the time came, the Government would be glad to consider how far the conclusions of the conference could be published.

## Car Parking and Road Accidents.

SECTION 50 of the Road Traffic Act, 1930, provides that if any person in charge of a vehicle causes or permits the vehicle or any trailer drawn thereby to remain at rest on any road in such a position or in such a condition or in such circumstances as to be likely to cause danger to other persons using the road, he shall be guilty of an offence. The Highway Code contains, *inter alia*, the following advice on the subject of obstruction.

"Never allow your vehicle to remain standing close to a bend or road junction, on or near the brow of a hill or hump-backed bridge, or in any other dangerous position." It is of interest to note in this connection that according to a recent statement complaints received by the Automobile Association show that the dangerous parking of motor vehicles is one of the most frequent causes of serious road accidents; and that reports resulting from a special investigation indicate that motorists who draw up at bends or on sharp rises obscure the view of the road and, especially at week-ends or holiday periods, create conditions which make accidents almost inevitable. The foregoing statements may perhaps be criticised on grounds of undue generality, but it can hardly be doubted that indiscriminate parking is a fruitful cause of accidents. Sir STENSON COOKE, Secretary of the Automobile Association, commented recently on the lack of provision made for motorists who wish to rest or admire the scenery in country districts. Thoughtlessness is, he urged, usually the worst offence of people who leave their cars in positions which may endanger the safety of other road-users; and he deprecated the absence of roadside halts or parking bays at frequent intervals and the existence of high kerbs which, although affording excellent protection for walkers in built-up areas, serve (he alleged) no useful purpose in country districts, prevent vehicles from drawing off the carriageway, and cause congestion. High kerbs, it was urged moreover, reduce the carrying capacity of the highway and, where there is little or no pedestrian traffic are "nothing but a nuisance." Their replacement by guard rails had been advocated by many sections of the community, and had recently been suggested by the House of Lords Select Committee on the Prevention of Road Accidents. This step, Sir STENSON continued, would certainly lessen the the chances of overturning or loss of control where motorists were obliged to swerve on to the verge in emergency, and would reduce the number of motorists who persist in keeping to the crown of the road. At the same time attention was drawn to the above-quoted sound advice contained in the Highway Code. It is of some interest to observe that according to the recently issued Home Office return of motoring offences in England and Wales for 1938, the total of offences and alleged offences in connection with dangerous parking was 1,906—a decrease of 724 compared with the figure for the previous year.

## Local Land Charges Searches: Memorandum.

THE attention of readers should be drawn to the memorandum concerning local land charges searches which has recently been adopted by the Council of The Law Society, the Joint Standing Committee of the Society of Clerks of the Peace of Counties and of Clerks of County Councils, the Society of Town Clerks and the Society of Clerks of Urban District Councils. The bodies above mentioned met to consider whether it was possible to agree what inquiries could properly be made of local authorities additional to official searches, to what bodies particular inquiries should be addressed, and what would be a proper fee to be generally recognised for answers to additional inquiries. The conclusions to which these bodies were able to come are duly set out in the memorandum in the course of which a suggested list is provided of questions to be addressed to the town clerk or clerk of the urban district council, or, as circumstances may require, to the clerk of the county council. The memorandum and the lists of questions do not apply to questions addressed to clerks of rural district councils. As indicative of the general character and range of the inquiries, it may be noted that questions are dictated by, *inter alia*, certain provisions of the Restriction of Ribbon Development Act, 1935, the Housing Act, 1936 (permitted number of occupants), the Public Health (Drainage of Trade Premises) Act, 1937, and the Petroleum (Consolidation) Act, 1938. The memorandum is more fully dealt with in an article appearing on p. 576 of the present issue.

## Solicitors' Defalcations.

THE Council of The Law Society has expressed the opinion that, while the number of solicitors who make default is very small compared with the total number practising, it is desirable that further protection should be provided in the interests not only of the public, but also of the profession. Two proposals have been put forward to this end. The first is designed to render more effective the rules made under the Solicitors Act, 1933, relating to client accounts, and is to the effect that, in order to ensure compliance with the rules, every solicitor shall have his accounts examined periodically by a qualified accountant, whose report shall be transmitted to the council. The second proposal is that (subject to an exemption in favour of a solicitor at the commencement of his professional career) every practising solicitor shall make an annual contribution, not exceeding £5, to a fund to be administered at the discretion of the council in giving relief to persons who have suffered loss owing to a solicitor's default. It is thought, however, that part of the proceeds of the special taxes imposed on the solicitors' branch of the legal profession should be used for the purposes of the fund, and the proposal which the council considers fair and moderate is that, if the fund is established for the benefit of the public and solicitors are to be compelled to contribute to it, the annual stamp duty on the issue of a practising certificate should be reduced. The council proposes to arrange for a special meeting of the members of The Law Society to consider these suggestions, and also to submit them to the Associated Provincial Law Societies for their observations.

## Recent Decisions.

IN *Buckley and Another* v. *Gayus* (*The Times*, 14th July) the Court of Appeal (Sir WILFRID GREENE, M.R., and MACKINNON and FINLAY, L.JJ.), on the defendant's appeal from the verdict and judgment for £800 in favour of the plaintiffs, who had claimed damages for alleged slander, in an action tried before GREAVES-LORD, J., and a special jury, negatived the argument that there was no evidence to go to the jury showing actual malice (required to defeat the plea of privilege), but granted a new trial on ground of misdirection.

In *Entwistle* v. *Verulam* (*The Times*, 15th July) the Court of Appeal (Sir WILFRID GREENE, M.R., and MACKINNON and FINLAY, L.JJ.) upheld a verdict and judgment for £750 damages in favour of the plaintiff entered in an action for libel tried before GREAVES-LORD, J., and a special jury. The Master of the Rolls intimated that, taking the summing-up as a whole, it was not possible to find such a criticism of it with respect to the learned judge's direction on the question of malice as would justify the court in interfering, and that there was nothing in the summing-up to justify the court in interfering with the amount of damages awarded by the jury.

IN *Lucas* v. *Postmaster-General* (p. 584 of this issue) the Court of Appeal (SCOTT, MACKINNON and FINLAY, L.JJ.) upheld the decision of a county court judge to the effect that an accident which occurred while a Post Office employee was attending an educational class in accordance with the conditions of his employment, did not arise out of and in the course of his employment within the meaning of s. 1 of the Workmen's Compensation Act, 1925. *London and North Eastern Rly. Co.* v. *Brentall* [1933] A.C. 489, distinguished.

In *Delgoffe* v. *Fader* (*The Times*, 18th July) LUXMOORE, L.J., sitting as an additional judge of the Chancery Division, held that jewellery, trinkets and some money contained in a handbag, with the possession of which a testator parted to the plaintiff, were the subject of a valid *donatio mortis causa*, but that the plaintiff was not entitled to a sum of £933, the amount of the testatrix's credit at a bank shown by a deposit account pass-book contained in the same handbag. See *Re Weston* [1902] 1 Ch. 680. *Re Dillon*, 44 Ch. D. 76, distinguished.

# Inquiries from Local Authorities.

No session of Parliament in these regulated days fails to pass several statutes restrictive of the free user of land and buildings, and the post-war volume of litigation on this subject is now extensive. From the time when an architect's client finally approves the plans of a new house to the cutting of the first sod, not less than three months is normally taken up with obtaining leave from various interested bodies to the building plans.

If the restrictive legislation was comprised in complete terms in the Statute Book, little difficulty would arise, since a reference to the statutes themselves would explain how any given property is affected. In practice, however, even where there is a statutory code, its administration is to greater or less degree in the hands of the local authority; while in many matters the various regulations are purely local, whether under local Acts, bye-laws or planning schemes.

There has accordingly grown up a practice by which a purchaser's solicitor addresses to the local authorities with jurisdiction a series of questions, designed to inform the purchaser of the liabilities to which he may be subject as against the local authority, if he proceeds with the purchase. The Land Charges Act, 1925, s. 15 (as amended), did provide machinery for registering some of these liabilities, and the searches provided for under that Act are now universally made. Unfortunately the section is exclusively concerned with charges, restrictions and prohibitions. It provides no means of informing a purchaser of all matters which will or may subject him to liability or restriction in the immediate future. Thus, a charge under the Public Health Act, 1875, s. 150, for road-making charges must be registered; but no registration at all can take place until the local authority has expended money. What a purchaser is concerned with, and is entitled to know, is whether he is going to be called on to pay money. He probably does not much care whether there is a charge or not, provided there is going to be a liability.

The questions at first asked were generally limited to those relating to road-making charges and the service of notices under the Public Health Acts; but it has been necessary to add further questions, particularly as to the effect of town planning schemes, the Housing Acts and the like. A further difficulty arose in that solicitors not conversant with local government did not always appreciate the division of functions between the county and district councils. In fact, in some matters, there is no universal rule. Some clerks to local authorities refused to answer any except a limited number of questions; others require a substantial fee for so doing.

In this unsatisfactory state of affairs, congratulations are due to The Law Society and to the societies of clerks of the peace of counties, of county councils and of urban district councils, who have adopted a memorandum designed* to remove the difficulties.

The memorandum, in a preamble, clearly explains the proper bodies to which to address questions on any particular matter, deals with the fees payable, the time at which searches should be made, and the length of time permissible to the local authority for reply, and concludes with useful lists of questions which may properly be asked.

As regards the suggested questions themselves, a few notes on matters of detail will suffice.

Number 4 asks if the buildings infringe the provisions of the bye-laws or town planning scheme. It is suggested that the question of user under the town planning scheme should also be raised, since this is of primary importance to a purchaser who intends to carry on a trade or business, which might be prohibited under the planning scheme.

Number 8 reads as follows: "Are the highways abutting on the property subject to restrictions under s. 2 of the Restriction of Ribbon Development Act, 1935?" and a marginal note points out that resolutions bringing roads under ss. 1 and 2 of the Act should be shown in the official certificate of search. In its present form an answer to this question might be misleading. What the question means is, are the highways subject to restrictions because they are classified roads under s. 2 as distinct from being brought under the Act by resolution? The correct answer to the question might therefore be a negative, despite the fact that there were in fact restrictions. It would be simpler therefore to ask plainly if the highways are classified roads for the purpose of s. 2.

Number 11 is a general question as to (*a*) any outstanding notices, and (*b*) any road improvement or construction proposal provided for in any planning scheme. One would like to see this question somewhat extended. It sometimes happens that a local authority has been taking some action with regard to property over perhaps quite a long period, but matters have not got as far as the actual service of a notice, or any step which would be registrable as a land charge. An instance would be steps preliminary to a demolition order under the Housing Act, 1936, s. 11. Another instance is an order for compulsory acquisition, which in one case in the writer's experience was actually served two days after the exchange of a contract of purchase. It may be a virtual certainty, and well known to the authority's officers, that such an order will be made in due course. Is a purchaser not entitled to the information? One appreciates that it would be unreasonable to ask a question which would involve a search of all the authority's records, perhaps for years; but it should be possible to arrive at some form of inquiry which would be a little more informative.

One occasionally sees an inquiry made as to whether a subsidy has been paid (under the Housing, etc., Act, 1923). This no doubt refers to restrictions imposed under s. 2 (4) of the Act, as to which, see *Burnham-on-Sea U.D.C.* v. *Channing* [1933] Ch. 583. These restrictions would appear to be within the definition of a local land charge contained in the Land Charges Act, 1925, s. 15 (7), as amended by the Law of Property (Amendment) Act, 1926, except when imposed before the Act. It is not quite clear whether subs. (5), which provides for retrospective registration, governs the new subs. (7) or not, so that possibly such a question would be justifiable where the property was built between 31st July, 1923, and 31st December, 1925, and appears to be of the type which might attract a subsidy.

The new memorandum also deals with the question of fees for replying to the questions, which should be 5s. for each authority, and advises that if the searches and inquiries are made before contract, as will usually be advisable, the searches should be repeated immediately before completion. This raises a question which is now becoming acute, and that is expense. In ordinary cases there will be a minimum of four searches and two sets of inquiries, costing 30s.; while copies of documents or plans or certificates in respect of which there is a statutory fee will further increase the total, to an amount which will exceed in many cases the amount of the stamp duty. Is it justifiable to put the purchaser of, say, a small cottage to such expense merely to inform him of his obligations to the local authority?

Any improvement would involve an alteration in the law, but one hopes that The Law Society and the other societies, which have already achieved a useful piece of work in conjunction, will consider trying to work out, and propose to the Government, a scheme by which anyone by filling in one form and for one fee can get all the information which now requires six forms and six fees.

Finally, there is one question on which the profession urgently needs some guidance. How far is a solicitor under a duty to delve into those complex questions of local administration? It is presumably the solicitor's duty to see that his client gets a title to property free from incumbrances, and consequently he ought clearly to search for incumbrances.

* *The Law Society's Gazette*, Vol. XXXVI, pp. 162-4

Many of the matters in question are not, however, incumbrances at all: *Re Forsey & Hollebone's Contract* [1927] 2 Ch. 379. One would like to have some judicial authority on the extent of a solicitor's obligation, if possible distinguishing between cases where the solicitor is instructed that the purchase is for a particular purpose (e.g., a purchase of land for building a factory), and those where no specific instructions are received. It is hardly necessary to point out that if there is a duty on a solicitor which he fails to perform so that his client suffers damage, the consequences to the solicitor might be extremely grave.

## Company Law and Practice.

**The necessity of Directors Acting at a Meeting.**

It is sometimes said that in the absence of a provision in the articles that a document signed by all or a majority of the directors shall have the same effect as a resolution of the board, the directors cannot act without meeting.

One of the cases referred to in support of this proposition is *D'Arcy* v. *Tamar, Kithill & Callington Railway Co.*, L.R. 2 Ex. 158. Readers of this column may remember that I have on a previous occasion dealt with that case at some length and that though it has always been treated with respect in the text books and in later cases it never appears to have been acted on directly in any of them and in one comparatively recent case it was apparently ignored without being distinguished.

In *D'Arcy's Case* it was decided that where the seal of a company had to be affixed with the authority of the board, a bond sealed by the secretary, who had obtained the written authority of two directors and at a separate interview the promise of the third director to sign that authority, was invalid, and in *John Shaw & Sons (Salford), Ltd.* v. *Shaw* [1935] 2 K.B., at p. 139, Slesser, L.J., quotes with approval the judgment of Martin, B., in which he says: "it is quite clear that the directors are to act together and in a meeting."

Apart from that case, however, which can hardly be regarded as a completely satisfactory authority, there are a number of cases which are quoted as authorities for the proposition referred to above.

For example, in *In re Homer District Consolidated Gold Mines*, 39 Ch. D. 546, it was held in the following circumstances that an allotment of shares was void as against the allottees; at a meeting of all the directors, of whom there were five, a resolution was passed not to allot any shares until a certain number had been applied for. The quorum of directors was two and a meeting was held at two o'clock by two directors on a notice, which did not disclose the nature of the business to be transacted and which was sent out a few hours before the meeting to two of the other directors, one of whom stated that he could not attend before three o'clock, and the other of whom did not get the notice till next day. No notice was sent to the fifth director who was abroad.

In his judgment, North, J., says: "No doubt a bare quorum is capable to act and bind the company at a meeting duly convened, with proper notice given to the other directors, at which, therefore, all the other directors may if they please be present; but these two directors met, having abstained from telling the others what they intended to do, and proceeded to pass these resolutions in the full belief, and I think knowledge, that if the others had had notice and been able to be there they would have objected . . . I come to the conclusion that what was done on that occasion was not the act of the board of directors and did not bind the company . . ."

That case, therefore, is merely authority for the proposition that if all the directors do not have sufficient notice of a board meeting, and do not all attend, a resolution passed by those who do attend is not a valid resolution of the board, and does not go nearly so far as *D'Arcy's Case*, in which it was held that it was only by a meeting of the board that the directors could act.

If this be the law, a possible reason for it is suggested in the report of *Re Portuguese Consolidated Copper Mines*, 42 Ch. D. 160.

In that case the facts were somewhat nearer to those of *D'Arcy's Case*, though they are by no means exactly similar.

Four persons were appointed directors of the company in accordance with the articles. An application was then made for shares in the company and on the same day the first meeting of directors was held, at which two only of the four directors were present. No sufficient notice had been given to the absent directors, but the two who were present resolved that two directors should form a quorum, and proceeded to allot shares on the application. They adjourned the meeting till the next day. On the day of the adjourned meeting the person to whom the first meeting had purported to allot shares gave notice to the company that he withdrew his application, and on that day the adjourned meeting was further adjourned till the following day.

On that day three directors were present and one who had previously been absent expressed his approval in writing of the resolution concerning a quorum and the meeting confirmed the allotments. The fourth director also wrote the same day approving the resolution as to a quorum, and his letter was received by the company next day.

It was held by the Court of Appeal that as there had been no notice of the original meeting none of the subsequent adjourned meetings were valid, and consequently that nothing that was done at any of those meetings could be valid.

During the course of the argument it was observed that the articles provided that the directors should hold meetings in such manner as they should think fit, and thereupon Fry, L.J., interjected the remark: "'As they think fit.' Must they not meet in order to think."

This certainly seems to suggest that in the ordinary way powers which directors are under the constitution of a company entitled to exercise must be exercised by them at a meeting of which proper notice has been given to all the directors entitled to attend.

There is, however, no authority other than *D'Arcy's Case* for the proposition that if the two directors had purported to make the allotment in the way they did in *Re Portuguese Consolidated Copper Mines*, and subsequently the absent directors had written to say they approved and confirmed that allotment prior to the withdrawal of the application then the allotment would have been bad.

The matter is further complicated by suggestions to be found in the reported cases that an act originally invalid because it was not the act of a properly convened board meeting may be rectified by lapse of time, and also that the importance of the act to the company may have some bearing on whether or not it will be vitiated by a technical irregularity.

In *Re Bonelli's Telegraph Co.*, L.R. 12 Eq. 246, an agreement entered into by two directors signing a letter, and subsequently signed by the remaining two directors of the company, was held by Bacon, V.-C., to be valid. He treated *D'Arcy's Case* as one turning on the rules of common law pleading, a view that has been subsequently disapproved of, and went on to say, dealing with the argument, that the article which provided that the acts of the directors should be binding meant that they should act in their "combined wisdom" and that nothing should be valid that was not done by three of them (a quorum) together: "Now, first of all, there is no such thing said in the articles. I quite agree that the 'combined wisdom' is regarded in the sense that they must all be of one mind. But I do not know that it is necessary that they shall all meet in one place."

Similarly, in *Southern Counties Deposit Bank* v. *Rider*, 73 L.T. 374, it was resolved at a meeting of directors at which no quorum was present that in future a quorum should be two.

Nearly six years later notices to summon a meeting for the purpose of passing a resolution to wind up were sent out by the authority of a board of two directors, and that resolution for winding up having been passed, the Court of Appeal refused a declaration that it had not validly been passed.

Dealing with that case in *Re Haycroft Gold Reduction and Mining Co.* [1900] 2 Ch. 230 Cozens-Hardy, J., says: "It seems probable, and indeed certain, that in the course of those years acts done by two directors must have been ratified and confirmed by a board consisting of at least three directors, and it might well be held that the long course of action by the directors as a board sufficed to establish a determination by them that two should be a quorum . . . I do not think the decision in that case can be taken as laying down any general principle which I am bound to follow . . . It does not touch the question whether a notice given without any kind of board meeting having been held is valid. In the present case I cannot regard the omission to convene a board meeting to consider matters of such vital moment as a winding up of the company and the appointment of a liquidator as a mere irregularity."

This would appear to indicate that some of the less important functions of directors might possibly be performed without a properly convened meeting, and the case of *Southern Counties Deposit Bank* v. *Rider* seems to suggest that subsequent acquiescence by a properly convened board of an invalid act of some directors may have the effect of ratifying that act. If this is so, the question whether or not any particular act of directors is valid must depend to a large extent on the circumstances of each particular case, and must in many cases be a question of degree.

## A Conveyancer's Diary.

(*Continued from p.* 560.)

**Annuities given by Will: Valuation.—II.**

An entirely different step was taken by Simonds, J., in *Re Cox* [1938] Ch. 556. In that case there were certain pecuniary legacies which had priority over the other gifts in the testator's will. Subject to them there were some annuities amounting in all to £960 per annum. Subject thereto there were certain dispositions of residue. The amount available for the annuities was £22,000 which was insufficient by its income to answer the annuities but quite sufficient to purchase annuities for the annuitants and to leave something for residue. In view of *Wright* v. *Callender*, there really seemed to be no good reason why the annuitants should not take all the income of the estate and have their annuities made up from time to time out of capital. But it was suggested that as they differed greatly in age the process of making up their annuities out of capital from time to time might result in the older annuitants receiving their annuities in full, but the estate being used up by them so that it might turn out that the younger annuitants did not get their annuities in full. In these circumstances Simonds, J., decided that it was fair as between the annuitants that they should have their annuities valued and the valuations paid to them. Such a decision probably did substantial justice in the case before the learned judge, but it is not at all clear that it is correct in principle. The rule that annuities should be valued is one invented to give a common basis for regulating the claims *inter se* of annuitants and pecuniary legatees who rank *pari passu*. It is perfectly true that in *Re Cottrell* and in *Re Ellis* the learned judges observed that it was a desirable consequence of their decisions that the method adopted left something for residue; but that was not the point of those decisions, which were confined (so far as the *ratio decidendi* was concerned) to the doing of justice between pecuniary legatees and annuitants. It was very agreeable that the method adopted left something for residue, but as residue would have no complaint if the whole estate was used up in meeting the claims of the pecuniary legatees and the annuitants, the residue was very fortunate to get anything at all. There is no indication in any other case than *Re Cox* that there is any basis for the valuation except that of reducing to a common standard pecuniary legacies of capital sums and annual payments during the life of the recipient. It is submitted, therefore, that there is very grave doubt indeed whether the extension of the doctrine in *Re Cox* to the case of a competition between a group of annuitants and residue is sound. It may or may not be ultimately held to be correct, but it must be recognised that the decision is not really justified by *Re Cottrell* which is concerned with something entirely different. And, as has already been pointed out, it seems very curious that a single annuitant competing with residue gets the whole income of the estate plus pieces of capital to make up its value from time to time (*Wright* v. *Callender*, 2 De G.M. & G. 652) while a group of annuitants, competing with residue, get the actuarial value of their various annuities (*Re Cox*). In both *Wright* v. *Callender* and *Re Cox*, the estates seem to have been actuarially solvent, i.e., so far as mathematics can predict all the annuitants were going to be paid in full eventually. The distinction would have been much more easily supportable if the estate in *Re Cox* had been actuarially *insolvent*. If so, the annuities would have had to abate and a common basis would have had to be found for calculating the respective abatements of annuitants with different expectations of life. Some of the observations of the learned judge suggest that he had the point in mind, but that is not the ground of his decision, since he professed to follow *Re Cottrell*, where the estate was actuarially solvent.

In the recent case of *Re de Chaffiron* (called *Chassiron* in 55 T.L.R. 841) [1939] W.N. 240, Morton, J., had to deal with a case exactly similar to *Re Cox*, except that it was complicated by cross remainders between the annuitants (which made the actuarial calculations exceedingly difficult) and that in giving the direction to pay the annuities out of income the testatrix expressly gave power to resort to capital. Morton, J., came to the conclusion that the case was distinguishable from *Re Cox* owing to the fact that there was this express power to resort to capital. He held that the annuitants ought to have what the will gave them, viz., their annuities out of the income so far as that was sufficient, the balance being made up out of capital. Such a decision would possibly not be beneficial to the younger annuitants as the estate might be all used up before the end of their lives. But it is submitted that in the absence of authority that would be the proper conclusion to come to and it is regrettable that it was necessary to come to it by distinguishing *Re Cox*. The distinction is one without any substance at all, because in *Re Cox* the annuities were charged on capital through being explicitly made prior to all the residuary gifts, and it is difficult to see how such a disposition differs from giving a power to resort to capital to make up deficiencies in the annuities. It is to be hoped that the Court of Appeal will shortly have an opportunity of laying down the law on this point definitely. As matters stand at present it is quite impossible to advise executors to distribute the estate without an application to the court if the will gives annuities, with priority over residue, but no pecuniary legacies ranking *pari passu* with them, and the income of the estate is insufficient to meet the annuities in full, whether or not the estate is actuarially insolvent.

There is one other small point concerning which the law seems also to be rather confused. In *Re Cottrell* the valuation was ordered to be as at the death of the testatrix. In *Re Dempster* it seems to have been as at the date of the order.

In *Re Richardson* it was as at a year from the death of the testator, and in *Re Ellis* it was as at the date of the order. In *Re Cox* it was also as at the date of the order. It would be desirable that this point, which does not seem to have attracted much attention in the arguments in the cases referred to, should be definitely considered in a future case so that the law may be clearly laid down.

## Landlord and Tenant Notebook.

**Furnished Apartments: Some Points.**

THE holiday season is approaching, and I propose to discuss in this article a few odd points of the law governing tenancies of furnished apartments and houses. I will not deal with the special implied warranty for fitness, which was the subject of the "Notebook" on 16th June, 1934 (78 SOL. J. 426). And the oft-debated question whether a particular occupier is a lodger or a tenant is unlikely to arise in cases of premises taken by holiday-makers. Most of the decisions on that question interpret s. 27 of the great Reform Act, 1832 (a statute passed because it was expedient to take effectual measures for correcting divers abuses that had long prevailed in the choice of members to serve in the commons house of parliament); this Act has been repealed and replaced by more comprehensive measures, and, apart from this, the holiday-maker is not likely to concern himself with qualifying for a vote. There are also a number of cases under the Lodgers' Goods Protection Act, 1871; this enactment, though not repealed, has been superseded by the Law of Distress Amendment Act, 1908. Nor are questions of implied covenant for quiet enjoyment or the right to sue for trespass likely to trouble the tenant of a furnished house or apartments for a short period.

More important is the question of the tenant's rights and duties as regards the chattels included in the agreement. The authorities are not numerous and the wide principle of considering the nature and object of the transaction has been freely applied.

A Scots decision, *Miller* v. *Stewart* (1899), 2 F. (Ct. of Sess.) 309, dealt with the question of the tenant's right to use, or perhaps I should say refrain from using, the chattels as he pleased. The pursuer, who had let a furnished house to the defender, found that the latter had taken certain pictures and prints from their places on the walls and put them in the stable-loft, and she sought an interdict to restrain such removal and to order restoration. Lord Justice-Clerk Macdonald said that no damage had been caused or was shown to be likely and held as follows: "I see no legal ground for holding that if the owner of movable articles lets a house along with these to a tenant, the tenant is under any legal obligation to keep the movable articles in the same positions in which he found them during the currency of his tenancy. I hold that he is entitled to use them as he may find best for comfort and amenity." No authority was cited in this or any of the other judgments delivered by the Court of Session; clearly, the principle applied is that of examining the object; but it is of some interest that there was one dissentient, Lord Young, who did, however, consider the matter one of degree.

The responsibility of the tenant for the safety of the chattels was admirably illustrated by the short case of *Phillimore* v. *Lane* (1925), 133 L.T. 268. The plaintiff let the defendant a furnished house under a comprehensive agreement containing the following tenant's covenants: (1) to deliver up the house, furniture and effects in as good state and order as they were in at the date of the agreement, reasonable wear and tear and damage by fire, storm and tempest excepted; (2) to make good, repair and pay for all damage to the premises and replace all articles of furniture and effects which might be broken, lost, damaged or destroyed by the defendant, his family, his servants or others; and (3) not to move any articles of furniture or effects from the premises.

During the currency of the term, articles and effects to the value of £127 5s. 6d. were removed from the house by burglars, and the action was brought to recover this amount. The claim was based on the agreement, alternatively in tort for negligence.

It was argued for the defendant that the second of the covenants summarised above cut down the generality of the first covenant, on which the plaintiff relied. The loss, it was pointed out, was not occasioned by any act of the tenant or his family or servants or "others" in the sense contemplated by the covenant and sanctioned by the *ejusdem generis* rule of construction.

Rowlatt, J., did not decide the *ejusdem generis* point, being satisfied that the first covenant covered the facts and that its operation was not modified by the one that followed.

As a good many furnished houses and apartments are taken without such comprehensive agreements, it may be useful to consider the position apart from contract. Rowlatt, J., did in fact, refer to the alternative claim in the last-mentioned case, finding that the tenant had not been negligent and implying, without citing authority, that that disposed of the claim. This, indeed, accords with the principles enunciated in *Coggs* v. *Bernard* (1713), 2 Ld. Raym. 909. "As to the third sort of bailment, *scilicet locatio*, or lending for hire, in this case the bailee is also bound to take the utmost care, and to return the goods when the time of hiring is expired. . . . But every man, how diligent soever he be, being liable to the accident of robbers, though a diligent man is not so liable as a careless man, the bailee shall not be answerable in this case, if the goods are stolen." As has been pointed out, "utmost" care is too strong, and does not fit in with the concluding sentence quoted; and, for that matter, in the passage omitted, Lord Holt cited Bracton (fol. 62*b*), who defines the liability in these cases as that of a "*diligentissimus paterfamilias*." So, in the result, those who let furnished premises should either stipulate for a covenant similar to that discussed in *Phillimore* v. *Lane*, *supra*, or take out suitable policies of insurance.

One other case may be mentioned while on this part of the subject, that of *Babbage* v. *Coulburn* (1882), 9 Q.B.D. 235. The agreement by which the plaintiff had let the defendant a furnished house was elaborate, the covenant to deliver up concluding with "in the event of any loss, damage, or breakage, otherwise than herein provided for, the same to be made good or paid for by the tenant, the amount of such payment, if in dispute, to be referred to and settled by two valuers, one to be appointed by the landlord and the other by the tenant or their umpire in the usual way." When the tenancy ran out the plaintiff employed a surveyor to assess dilapidations and sued for the amount assessed. He contended in vain that the agreement to refer was independent of the agreement to deliver up.

Another point which may arise—many people being apprehensive that their holidays may be brought to a sudden end—is that of liability for rent when occupation becomes impossible through no fault of either party. There is, as a general rule, no reason for not applying the principle of *Paradine* v. *Jane* (1647), Aleyn 26, to furnished premises so let; but there is a case, *Packer* v. *Gubbins* (1841), 1 Q.B. 421, in which that principle was held to be excluded by the agreement between the parties or their attitude towards it. The facts were that premises were let furnished at £16 a year, payable quarterly; on a 30th August the building was destroyed by fire. The plaintiff limited his claim to a "rateable proportion" of the quarter's rent, £2 13s.; the defendant contended that nothing at all was due. Denman, C.J., said that as both parties agreed that the liability ceased after the fire, there was no demise for a term certain; therefore

the action depended on actual occupation, and liability accrued *de die in diem*. It hardly seems accurate in law to say that the true nature of an agreement can be affected or must be determined by the manner in which parties subsequently regard it, but the authority can, of course, be supported by treating it as a case in which a plaintiff claimed less than his due.

## Our County Court Letter.

### THE REMUNERATION OF CARETAKERS.

In a recent case at Kidderminster County Court (*Elson* v. *Charles and Another*) the claim was for £78 as arrears of wages at 5s. a week from the 6th April, 1931. The defendants were the administrators of the estate of the late owner of Moor Hall, Stourport-on-Severn, who had died on the 27th February, 1938. The plaintiff's case was that her husband had for many years worked for the deceased until April, 1931, when he obtained work elsewhere. The deceased then asked them to continue to live at Moor Hall, which was unoccupied, in order to prevent damage from trespassers. No rent was charged, but the plaintiff asked to be paid 10s. a week as caretaker. The deceased agreed to pay her 5s. a week, but always postponed payment of the accumulated amount until the sale of the premises. The latter remained unsold, however, at the date of the death of the deceased. The claim was accordingly made against his estate to the extent allowed by the Statute of Limitations. The defendants did not admit the alleged agreement, as the deceased was at Towyn on the date of the alleged conversation. His diary was produced as evidence of this. Moreover, the hall was practically derelict in 1931, and it would have been a waste of money to pay a caretaker. His Honour Judge Roope Reeve, K.C., observed that, although corroboration was not essential, in a claim against the estate of a deceased person, it was necessary to investigate such a claim closely. No claim was apparently made during the life of the alleged employer, and reasonable promptitude was not shown in claiming against his estate. Judgment was accordingly given for the defendants, with costs.

### CONTRACT FOR PLASTERING.

In *Turner* v. *Norton*, recently heard at Bakewell County Court, the claim was for £5 for work done. Both parties were builders, and the plaintiff's case was that he tendered for the plastering of three houses (which were being built by the defendant) for £30 in October, 1938. This was the first agreed price, but, in consideration of the plaintiff expediting the work, the defendant agreed to pay £35. The plaintiff's men accordingly began the work on the 15th November and finished on the 2nd December. An offer of payment by instalments was made, but the plaintiff claimed payment in a lump sum. A writ was therefore issued for £35, and the defendant paid £30, but disputed liability for the balance. His case was that there was nothing in writing about the alleged agreement to pay the extra £5, and a detailed bill was not delivered until the 7th March, 1939. The plaintiff had once asked for extra payment, but the defendant had merely promised to pass on anything extra allowed by the architect. In fact nothing extra had been allowed, and therefore nothing was due to the plaintiff. His Honour Judge Longson gave judgment for the plaintiff, with costs.

### DISMISSAL OF JEWELLER'S MANAGER.

In *Lucas* v. *Brooking*, recently heard at Exeter County Court, the claim was for £100 as damages for wrongful dismissal. The plaintiff's case was that in September, 1938, he became the manager of the shop of the defendant, who was a jeweller and licensed pawnbroker. The remuneration was £6 a week and commission (1¼ per cent.) and the customary notice was three months on either side. Matters were satisfactory until the 1st April, 1939, when the defendant inquired about a watch. This was one of several articles, the property of the plaintiff, which had been exhibited for sale with the defendant's knowledge and consent. The watch had been sold for £15, in respect of which the plaintiff would have allowed the defendant a commission of 15 or 20 per cent. The defendant's case was that he was unaware that his premises were being used for transactions in the plaintiff's own property, and there was evidence justifying the plaintiff's dismissal without notice. His Honour Judge Thesiger observed that, although the plaintiff thought there was no harm in what he did, he had not discharged the onus of proof that the transactions occurred with the defendant's consent. Judgment was given for the defendant, with costs.

## Reviews.

*Bankruptcy, Liquidation and Receivership.* By N. E. Mustoe, M.A., LL.B., with *Accounts* by W. A. Kiernan, A.S.A.A. 1939. Demy 8vo. pp. lix and 490 (Index 18). London: Butterworth & Co. (Publishers), Ltd. 15s. net.

The three subjects comprised in this work are allied, but the first two are governed by statute, whereas the third is chiefly affected by case law. The principles applicable to receivership have, therefore, to be deduced from reported cases, the facts of which are given in the text. This is an advantage to readers who are not in close touch with a law library, for example, students of banking, secretarial practice and commerce. The accounts section includes forms illustrating the progress of fictitious cases, and a number of test questions should be a useful feature. Practitioners will gain useful guidance from the legal precedents in the Appendices.

*The Principles of the Law of Bankruptcy and Deeds of Arrangement.* By Harold Potter, Terence Adams and Augustus W. Dickson. Second edition. 1939. Demy 8vo. pp. liii and 355 (Index 35). London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

Over six years have elapsed since the publication of the first edition of this book. During this period, with the exception of such matters as the effect of execution, the courts have been quiescent on principles. A new chapter, by Mr. A. T. Adams, has been included on bankruptcy offences, and the remainder of the text has been revised and in many places re-written. This has resulted, however, in only a slight increase in the size of the work, but the format has been considerably altered. The purpose of this is to emphasise the relation between principles of law and the exceptions. The subject of insolvency, as affecting individuals, has been lucidly surveyed in all its aspects. The authors should, therefore, be justified in their hopes that critics may be able to accord an even warmer appreciation to this edition than to the first.

## Books Received.

*The Law of Stamp Duties.* By E. G. Sergeant, LL.B., Solicitor, of the Office of the Solicitor of Inland Revenue. 1939. Demy 8vo. pp. xliii and 351 (Index, 33). London: Hamish Hamilton (Law Books), Ltd. 15s. net.

*Eddy on the Law of Distress.* Second Edition, 1939. By John Denman Finlaison, M.A., LL.B. (Cantab.), of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. Crown 8vo. pp. xxvii and (with Index) 188. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

*Lewin's Practical Treatise on the Law of Trusts.* Fourteenth Edition, 1939. By R. I. Henty, B.A., of the Inner Temple, Barrister-at-Law, and J. P. L. Redfern, B.A., of Gray's Inn, Barrister-at-Law. Royal 8vo. pp. clxxii and (with Index) 1081. London: Sweet & Maxwell, Ltd. £3 net.

# To-day and Yesterday.

LEGAL CALENDAR.

17 JULY.—On the 17th July, 1771, a woman was whipped through Fleet Street to Temple Bar for decoying children from their parents and then putting out their eyes in order to use them for begging as an incitement to the pity of the charitable.

18 JULY.—Justice was swift in the case of John Riley, who was tried at the York Assizes on the 18th July, 1859, for the murder of his wife, whom he had killed on the 3rd July. The wretched pair had lived at Hull in drink, profligacy and idleness. It was the drink that was their undoing. On the fatal day the woman, having breakfasted on sixpennyworth of rum, lay down to sleep off the effects. The man went into the bedroom after her and fastened the door. Later in the afternoon a neighbour saw him through the window hanging by the neck from two hooks fixed in the ceiling. On breaking in they found the woman lying as if asleep, but dead with a severed throat. The authorities recovered the man from the effects of his hanging only to have him convicted and hang him again.

19 JULY.—On the 19th July, 1839, Feargus O'Connor, the Irish agitator whose turbulence was such a disturbing element in England during the Chartist unrest, had one of his early collisions with the law. He was prosecuted at York Assizes for publishing in the *Northern Star*, which he edited, an article which denounced a Wiltshire workhouse as the "Warminster Bastille," alleging that a little boy, confined in one of the cells there, had starved to death after eating two of his fingers and the flesh of his arm. O'Connor, who conducted his own defence in his usual rambling and egotistical way, was found guilty. He was, however, not called up for judgment.

20 JULY.—On the 20th July, 1787, Dr. John Elliott, an eccentric physician, was tried at the Old Bailey for discharging a pistol at his sweetheart, Miss Mary Boydell. While she was out walking one day he had come up behind her and shot off his weapon so close that it had set her cloak on fire. Otherwise she was unharmed. At his trial the defence tried to establish his insanity by showing that he held the theory that the sun might be inhabited, its light proceeding "from a dense and universal aurora" at such a distance from its surface as not to preclude "water and dry land, hills and dales, rain and fair weather." The Recorder rejected the theory of insanity, but the prisoner was acquitted on the ground that the pistol was not loaded with ball. He was, however, ordered to be detained for trial for assault and in consequence went on hunger strike in Newgate and died.

21 JULY.—One morning in November all Paris was startled by the story of how a lady of fashion had been found murdered in her locked room. The body bore fifty wounds and a great quantity of money was missing. There were plenty of clues, including some hair and a piece of a cravat, which she had torn off in the struggle, and the murderer's knife, found in the remains of her fire. There was also a blood-stained shirt hidden in an attic. Though nothing conclusive could be proved against him, the circumstantial evidence was so strong that her confidential steward was condemned to death. On appeal, the sentence was commuted to penal servitude in the galleys, but he died a month later. Soon afterwards a horse dealer in the provinces attracted the attention of the police. He proved to have been formerly a servant in the lady's house and, as a result of further investigation, he was condemned to death on the 21st July, 1690.

22 JULY.—On the 22nd July, he was put to the torture and confessed that after being discharged he had hidden in an attic for some days and finally found means to accomplish his purpose unobserved. Having thus cleared the name of the steward, he was broken on the wheel.

23 JULY.—On the 23rd July, 1803, Lord Kilwarden, Chief Justice of the Irish King's Bench, was murdered by a body of insurgents.

THE WEEK'S PERSONALITY.

One of the chief tragedies of Robert Emmet's futile rising in Dublin was the murder of Lord Kilwarden. He had been Lord Chief Justice of Ireland for five years, displaying a moderation and humanity rare among his brethren. Unfortunately for him, on the night of the insurrection, he happened to be driving from his country residence to Dublin Castle with his daughter and a nephew. In Thomas Street his carriage was stopped by the rebels, who murdered him out of hand, mistaking him for Lord Carleton, the Chief Justice of the Common Pleas, who had a far sterner reputation. As he lay dying he heard a wish expressed for instant vengeance on his assailants, yet moderate to the end he said: "Murder must be punished, but let no man suffer for my death but by the laws of my country." He was not a brilliant judge, but he was upright and honest and well maintained the credit of his high office by sedulous attention to his duty and a sound grasp of legal principle.

TRUTH UNDER DIFFICULTIES.

At Brentford County Court recently a witness, who was told by counsel that he did not seem to be very accurate, replied with unusual insight: "You aren't when you are in this sort of place." After all, the witness-box is not a very reassuring situation. The late Mr. Balfour Browne, K.C., used to recall how once he let a junior with a rather angry manner examine a witness who afterwards said to him: "I'm afraid I made a mess of it, but I could not make out what Mr. —— wanted to be at. He kept on scowling at me until I did not know whether I was on my head or my heels." Cross-examination, of course, is supposed to have even more disconcerting effects and has been described as an invention "to draw whatever you please from an innocent man with delicate nerves and to save a robust criminal." Some foreknowledge of its probable effects inspired the Irishman who, when a formidable leader rose imposingly to cross-examine him, cried: "Yer Honour, ivry word I've been sayin' is God's truth and if that gintleman there makes me say anythin' else it'll be a b—— lie."

FITTING THE CRIME.

There is often a Gilbertian aptness about the way in which American judges deal with people convicted before them. The latest example comes from Indiana, where a dispute about a boundary between two farmers reached such a pitch that they spent six months sniping each other with shotguns. At last the neighbours complained of the noise. The judge, in sending them to prison, ordered that they should occupy the same cell and never be out of each other's sight. Even when they cleaned windows they had to be stationed on either side of the same pane. It was America that invented prison sentences served by week-end instalments so that the condemned man might not lose his job. Not long ago a man was sentenced to attend and memorise a year of sermons. A judge in Cleveland, Ohio, took to giving dangerous drivers the alternative of going to prison or sending their cars to the scrap-heap. Moreover, he helped in the smashing. Once the sound of his sledge-hammer activities was broadcast on the radio.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

### Mortgage of Hop Farm.

*Q.* 3655. We are consulted by a client who is proposing to lend money on the security of a hop farm. What steps could he take to ensure that his security shall not be diminished by the sale by the mortgagor of his registered hop quota? It will be appreciated that such a sale may render the farm in question practically valueless. Can our client take from the proposed mortgagor a charge of any practical value of the hop quota? If such a transaction is practicable, what steps can the lender take to ensure that the quota shall not be sold without his knowledge?

*A.* The only steps the lender can take are: to incorporate in the mortgage covenants by the mortgagor to use his best endeavours to maintain his status as a registered producer, and to do nothing whereby his quota may be jeopardised. The form in a mortgage of licensed premises can be adapted, substituting "Hops Marketing Board" for "justices." It does not appear that a charge upon the hop quota would have any practical value. The Hops Marketing Board should be approached on the question of whether they will undertake to notify to the mortgagee any proposed change in the register of producers affecting the registration of the borrower. Under para. 20 of the Hops Marketing Scheme (Approval) Order, 1932, the register is open to the public for inspection or the making of copies. This would only reveal any change in the borrower's status after the event, whereas the lender requires prior information.

### Validity of Charge.

*Q.* 3656. A advances money to B upon B's written undertaking that on the sale of a certain property, and subject to an existing charge for £200, the money lent by A should be repaid to A "out of the purchase consideration paid in respect of such properties as and when received." B then becomes bankrupt. Is A a secured creditor either (1) as an equitable chargee of the property, or (2) as an assignee or chargee of part of a future debt?

*A.* The question raised, on the facts stated, has been the subject of much diversity of judicial opinion. It appears, however, that A is an equitable chargee of the property, but not an assignee of part of a future debt. See the cases discussed in *Durham Bros.* v. *Robertson* [1898] 1 Q.B., at pp. 773–774.

### Purchase of Land in Joint Names—Estate Duty and Succession Duty.

*Q.* 3657. A purchaser in 1937 bought a freehold property and had the same conveyed to himself and his wife as joint tenants. The purchase money was wholly found by the husband. The wife died in September, 1938, leaving an estate of about £20,000, and the husband has since sold the property for £1,250. The revenue authorities have set up a claim for estate duty in respect of the moiety of the freehold, saying that the claim arises under s. 2 (1) of the Finance Act, 1894, as they submit that when a husband purchases land in the joint names of himself and his wife the presumption is that he intends to make an immediate gift of a moiety therein in favour of his wife (*Dunbar* v. *Dunbar* [1909] 2 Ch. 639), even if the beneficial ownership is not specifically stated by the conveyance. In addition to estate duty, the authorities have also set up a claim for succession duty in respect of the same moiety. Your opinion is requested (*a*) whether the claims for estate and succession duties are well founded, and (*b*) if so, whether the value of the moiety is to be aggregated with the remainder of the wife's property to arrive at the rate of estate duty.

*A.* Where a person purchases land in the names of himself and another, there is normally a resulting trust in favour of the purchaser. But in the case of a purchase by a husband in the names of himself and his wife, there is a presumption of advancement in her favour so that the parties immediately become beneficial joint owners (*Dunbar* v. *Dunbar* [1909] 2 Ch. 639, and "Dymond's Death Duties," 8th ed., p. 60). Accordingly, if in such a case the wife dies first, estate duty is payable on her moiety either on the ground that she was competent to dispose (Finance Act, 1894, ss. 2 (1) (*a*) and 22 (2) (*a*)), or that her interest ceased within s. 2 (1) (*b*). Succession duty is also payable (Succession Duty Act, 1853, s. 3). The beneficial interest in the wife's moiety accrues by survivorship on her death to her husband. The moiety is aggregable with the other property passing on the wife's death (Finance Act, 1894, s. 4). It cannot be said that such moiety was property in which she never had an interest within the meaning of the proviso to that section.

### Liability to 1 per cent. Legacy Duty.

*Q.* 3658. A died in 1938 leaving personal estate worth £25,000 and real estate worth £2,000. He bequeathed to his son B £100 and a life interest in one-fifth of his estate. It seems that as the estate is over £15,000, B's liability to pay legacy duty arises if his interest exceeds £1,000. He is aged fifty-nine and the value of an annuity of £150 (i.e., £5,000 at 3 per cent.) is roughly £1,500. Is he liable for legacy duty?

*A.* As the property passing exceeds £15,000, legacy duty at £1 per cent is *primâ facie* chargeable (Finance (1909-10) Act, 1910, s. 58). The total benefit taken by the son B, i.e., his legacy of £100 and the value of his life interest, exceeds £1,000, and therefore he is not entitled to the benefit of proviso (*b*) of s. 58 (2). Both the legacy and the life interest are chargeable.

### Non-registration of Dwelling-house.

*Q.* 3659. A is the owner of a property which he purchased in 1912 and remained in occupation of the whole of the property until 1928, when he let it to a tenant. A omitted to register the property under the 1933 Act, as the property was a Class C dwelling within the meaning of that Act. The tenant is now claiming the protection of the Rent Acts, but the landlord submits that as the property was never subject to the original Act it cannot under any circumstances be affected by the subsequent Acts. It is desired to know whether the property is affected by the Acts or not, and reference to cases and sections would be appreciated.

*A.* As the whole of the house was in the possession of the owner on the 21st July, 1923, the Rent Acts do not apply to the house. The subsequent letting in 1928 did not bring the house within the Acts. See *Barker* v. *Hutson* [1929] 1 K.B., at p. 133. As there was no question of the Acts "ceasing to apply," within the meaning of s. 2 (2) of the Act of 1933, it was not necessary to register the house as decontrolled. The landlord's contention is therefore correct. See *Brooks* v. *Brimecombe* [1937] 2 K.B. 675.

# Notes of Cases.

## Judicial Committee of the Privy Council.

### Ladore and Others *v.* Bennett and Others.

Lord Atkin, Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Romer. 8th May, 1939.

ONTARIO — LOCAL GOVERNMENT — MUNICIPALITIES IN FINANCIAL DIFFICULTIES—PROVINCIAL LEGISLATION TO REMEDY—VALIDITY.

Appeal from a decision of the Ontario Court of Appeal, affirming a judgment of Hogg, J.

The appellants brought an action on their own behalf and on behalf of other holders of debentures issued by certain Ontario municipalities and public utility undertakings, claiming a declaration that a scheme arising out of the debenture indebtedness of the several municipalities, and the statutes of the Ontario Legislature authorising the scheme, were *ultra vires* the Provincial Legislature. Four adjoining municipalities in Ontario had each raised loans for local purposes amounting in the aggregate to many millions of dollars, represented by debentures which were simple acknowledgments of debt and gave no charge on municipal property. Large amounts were held by holders resident outside the Province. Those municipalities and various public utility corporations connected with them having become involved in serious financial difficulties, the Act (No. 74 of 1935), now challenged by the plaintiffs, was passed amalgamating the municipalities. A special body was constituted with interim powers of administering the affairs of the new city. By s. 6 (1) it was to have and exercise the same rights, authorities, powers and duties as by the provisions of Pt. III of the Department of Municipal Affairs Act were conferred on that department, and the provisions of Pt. III were to apply to the new city. By s. 7 (c) it was to undertake the preparation and submission of a plan for funding and refunding the debts of the amalgamated municipalities on the general basis that the debt of each of the amalgamated municipalities should be discharged by the imposition of rates on the rateable property in that area of the new city which formerly comprised such municipality. The public utility commissions were amalgamated into a new commission by s. 12 (1). (*Cur. adv. vult.*)

LORD ATKIN, delivering the judgment of the Board, said that the appellants contended that the statute was *ultra vires* the Legislature of Ontario because it invaded the field of the Dominion as to bankruptcy and insolvency (s. 91 (21)), and interest (s. 91 (19)), and was not within the exclusive powers of the Province because it affected private rights outside it. Insolvency was the inability to pay debts in the ordinary course as they became due; and there appeared to be no doubt that that was the condition of those corporations. But it did not follow that because a municipality was insolvent the Provincial Legislature might not legislate to provide remedies for that condition. If local government in any particular area became ineffective or non-existent because of the financial difficulties of one or more municipal institutions, or for any other reason, it was not only the right, but it would appear to be the duty, of the Provincial Legislature to provide the necessary remedy. It was argued that the impugned provisions should be declared invalid because they sought to do indirectly what could not be done directly, namely, to facilitate repudiation by provincial municipalities of obligations incurred outside the Province. But in the present case nothing had emerged even to suggest that the Legislature of Ontario at the respective dates had any purpose in view other than to legislate in times of difficulty in relation to the class of subject which was its special care, namely, municipal institutions. Such legislation, if directed *bonâ fide* to the effective creation and control of municipal institutions, was in no way an encroachment on the general exclusive power of the Dominion Legislature over interest. The appeal must be dismissed.

COUNSEL: *M. L. Gordon*, K.C., and *Charles Sale*; *J. H. Rodd*, K.C.; *J. C. McRuer*, K.C., for the Attorney-General for Ontario.

SOLICITORS: *Lee & Pembertons*; *Blake & Redden*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## House of Lords.

### Robertson *v.* Petros M. Nomikos, Ltd.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Wright and Lord Porter. 10th May, 1939.

INSURANCE (MARINE)—INSURANCE OF FREIGHT—EXPLOSION IN VESSEL BEFORE CHARTERED VOYAGE—WHETHER CLAIM FOR LOSS OF FREIGHT "CONSEQUENT ON LOSS OF TIME"—HULL AND MACHINERY ALSO INSURED—CONSTRUCTIVE TOTAL LOSS—NO NOTICE OF ABANDONMENT—WHETHER RIGHT TO CLAIM FOR LOSS OF FREIGHT AFFECTED.

Appeal from a decision of the Court of Appeal.

By a Lloyd's policy, subscribed by the appellant Robertson and other underwriters, the plaintiff shipowners were insured in respect of their steamer on "freight chartered or otherwise." The policy was subject to the Institute Time Clauses—Freight, cls. 5, 6 and 8 of which provided: "5. In the event of the total loss, whether absolute or constructive, of the steamer, the amount underwritten by this policy shall be paid in full, whether the steamer be fully or only partly loaded or in ballast, chartered or unchartered. 6. In ascertaining whether the vessel is a constructive total loss the insured value in the policies on ship shall be taken as the repaired value and nothing in respect of the damaged or break up value of the vessel or wreck shall be taken into account. 8. Warranted free from any claim consequent on loss of time whether arising from a peril of the sea or otherwise." The plaintiffs also insured the hull and machinery with a number of Lloyd's underwriters and insurance companies. In those policies the insured value and the value of the steamer for constructive total loss was agreed at £28,000, and it was agreed that in respect of particular average there should be a deductible franchise of £1,000. The plaintiffs chartered their steamer to carry a cargo of oil from Venezuela to Europe. The steamer went to Rotterdam for certain repairs before proceeding on her chartered voyage. While there, she was seriously damaged by an explosion on board, and was unable to make the chartered voyage, the freight never being earned. The vessel could not have been repaired for less than £37,000, but it was agreed that, owing to the rise in tonnage prices, her value when repaired would be about £45,000. The plaintiffs therefore decided to repair the steamer and not to abandon her to the hull underwriters. They claimed for a partial loss only against their hull underwriters, who paid on that basis. The plaintiffs brought this action against the freight underwriters for loss of the chartered freight. The Court of Appeal, reversing a decision of Goddard, J., upheld the claim. (*Cur. adv. vult.*)

LORD WRIGHT said that the principal objections raised by the appellant to the claim were: (1) that there was not a constructive total loss of the vessel because there had been no notice of abandonment by the owners, who, on the contrary, had elected to retain the vessel and claim as for partial loss; and (2) that in any case the claim was excluded by cl. 8 as being a claim consequent on loss of time, because the repairs took so long as to make it impossible to perform the charter-party. The question was whether there was a constructive total loss of the vessel by insurance law. If cls. 5 and 6 were read together, they could not apply unless there were policies on ship, so as to determine the insured value. The appellant contended that the clauses only applied if the shipowner had elected to treat the loss under his hull policies as a constructive

total loss by giving notice of abandonment of the ship. The words " constructive total loss " must have (apart from cl. 6, which merely invoked the hull policy in order to get a figure of value) the same meaning as if there were no hull policy in existence at all. The test was not the shipowner's intention, or what he did under the hull insurances. In his (his lordship's) opinion, notice of abandonment was not an essential ingredient of a constructive total loss. The appellant's argument confused constructive total loss with the right to claim for a constructive total loss. As to the meaning of cl. 5, its effect, in his opinion, was to fix a conventional measure of indemnity —namely, that the amount underwritten should be paid in full, the words " whether . . . unchartered " not being words of limitation. His lordship then considered *Roura & Forgas* v. *Townend* [1919] 1 K.B. 189 ; *Bensaude* v. *Thames & Mersey Marine Insurance Co.* [1897] A.C. 609 ; and *Jackson* v. *Union Marine Insurance Co.*, L.R. 10 C.P. 125, and said that he did not think, on the facts, that the present claim was consequent on loss of time within the meaning of cl. 8. The appeal must be dismissed. The other noble lords concurred.

COUNSEL : *Sir Robert Aske*, K.C., and *W. L. McNair ; H. U. Willink*, K.C., and *A. A. Mocatta.*

SOLICITORS : *Ince, Roscoe, Wilson & Glover ; Holman, Fenwick & Willan.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Court of Appeal.

### Lane *v.* Herman.

Luxmoore and du Parcq, L.JJ., and Humphreys, J.
19th June, 1939.

PRACTICE—SUMMONS UNDER ORD. XIV—TRANSFER BY DEFENDANT TO COUNSEL'S LIST—WHETHER STEP IN THE PROCEEDINGS—ARBITRATION ACT, 1889 (52 & 53 Vict., c. 49), s. 4.

Appeal from Tucker, J.

On the 1st April, 1939, the writ in this action was issued. On the 27th May the defendant entered an appearance. On the 1st May his solicitors wrote to the plaintiff's solicitors asking for an extension of time for delivery of defence pending the hearing of a summons. On the 2nd May the plaintiff's solicitors replied that they could not grant further time and that they had that day issued a summons for judgment which they enclosed together with an affidavit in support by the plaintiff. The summons for judgment under Ord. XIV having been thus issued, the defendant's solicitors wrote that they had received the letter of the plaintiff's solicitors and accepted service of the summons. They added that they had that day put the summons into counsel's list. On the 9th May, the defendant took out a summons asking that the proceedings might be stayed under the Arbitration Act, 1889, s. 4, on the ground that there was an agreement between the parties relating to the subject-matter of the action, that any dispute should be referred to arbitration. On the 11th May the Master stayed the proceedings. Tucker, J., upheld the decision.

LUXMOORE, L.J., said that the plaintiff had appealed on the ground that the defendant had taken a step in the proceedings before he had made his application for a stay and was therefore precluded from asking the court to make that order (s. 4 of the Act). The step alleged was getting the summons put into counsel's list, but that was not taking a step in the proceedings. What Lindley, L.J., said in *Ives and Barker* v. *Willans* [1894] 2 Ch., at p. 484, was the best guide to what was a step in the proceedings in such a case. It must be a step in the technical sense if it was to bar an application for a stay under s. 4. The appeal should be allowed.

DU PARCQ, L.J., and HUMPHREYS, J., agreed.

COUNSEL : *F. Lincoln ; N. Lawson.*

SOLICITORS : *Rowley, Ashworth & Co.*, for *Sebag Cohen and Co.*, of Sunderland ; *Culross & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Fawcett *v.* Johnson's Service Garage.

Luxmoore and du Parcq, L.JJ., and Humphreys, J.
20th June, 1939.

PRACTICE—ACCIDENT—ACTION—ALLEGED NEGLIGENCE OF TWO DEFENDANTS—DENIAL OF NEGLIGENCE BY EACH—ALLEGATION BY EACH THAT ACCIDENT DUE TO THE OTHER'S NEGLIGENCE—APPLICATION BY DEFENDANTS FOR SECURITY FOR COSTS ON REMISSION TO COUNTY COURT—COUNTY COURTS ACT, 1934 (24 & 25 Geo. 5, c. 53), s. 46.

Appeal from Asquith, J.

The plaintiff brought an action in the High Court for damages for personal injuries sustained through the alleged negligent driving of a motor-car belonging to the first defendant and a motor-car belonging to the second defendant. The two defendants each denied negligence, pleading that the matters complained of were attributable to the other's negligence. On the application of the defendants under the County Courts Act, 1934, s. 46, the master ordered that the plaintiff should give £20 security in respect of each of the defendant's costs and that in default the action should be transferred to the county court. Asquith, J., affirmed the decision.

LUXMOORE, L.J., allowing the plaintiff's appeal, said that s. 46 was substantially the same as s. 2 of the County Courts Act, 1919. It conferred a discretionary power on the court, but before the discretion came into being the court must be satisfied that if a verdict was not found for the plaintiff he would have no visible means of paying the costs. Here the evidence was enough to satisfy the court on that point, but, being so satisfied, the court had to consider all the circumstances before making the order. The reasoning in *Stevens* v. *Walker* [1936] 2 K.B., at pp. 221, 225, applied here. The court had to consider the material facts as disclosed in the statement of claim and the two separate defences. On the pleadings it was reasonably plain that the substantial issue at the trial would be whether the first or the second defendant was liable or perhaps whether both were liable. It was most unlikely that the plaintiff would fail to succeed against one or the other or both. There was no difficulty in answering the question. Is there any reasonable chance of a verdict not being found for the plaintiff ? His lordship referred to *Evans* v. *Bartlam* [1937] A.C. 473, and said that the chance of the plaintiff being ordered to pay any costs was remote.

DU PARCQ, L.J., and HUMPHREYS, J., agreed.

COUNSEL : *Weitzman ; D. Rosenberg ; Armstrong-Jones* and *Platts Mills.*

SOLICITORS : *Silkin & Silkin ; S. Rutter & Co. ; William Easton & Sons.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## Appeals from County Courts.

### Lucas *v.* Postmaster-General.

Scott, MacKinnon and Finlay, L.JJ. 17th July, 1939.

WORKMEN'S COMPENSATION — ACCIDENT — CONDITION OF EMPLOYMENT—ATTENDANCE AT EDUCATIONAL CLASSES—WRIST SPRAINED AT GYMNASIUM CLASS—RIGHT TO COMPENSATION—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 1.

Appeal from Clerkenwell County Court.

A boy of sixteen years entered the employment of the Post Office in the Stores Department in March, 1937. One of the conditions of his employment was as follows : " All boys until they reach eighteen years of age are required, as a condition of their employment, to attend educational classes provided by the Department, normally for eight hours weekly, of which five hours will be in the Department's time and three hours in their own time." The normal hours of work were from 8 a.m. to 12.30 p.m. and from 1.30 p.m. to 5.45 p.m. Under the conditions of his employment the

boy attended (among other classes) a gymnasium class at a London County Council school under an employee of the County Council. The class was held from 6.15 p.m. to 7.15 p.m. On the 5th October, 1938, the boy sprained his wrist in the course of this class. His Honour Judge Earengey, K.C., held that he was not entitled to compensation under the Workmen's Compensation Act, 1925, as attendance at the class was not part of his work but in the nature of a qualification for his continued employment.

FINLAY, L.J., delivering the court's judgment dismissing the boy's appeal, said that the question was the proper application of the words of s. 1 of the Act. *London and North Eastern Railway Co.* v. *Brentall* [1933] A.C. 489 was distinguishable.

COUNSEL: *G. Brooks; J. Pugh* and *Jukes.*

SOLICITORS: *Darling & Taylor; Solicitor to the Post Office.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

### John Jacques & Son, Ltd. *v.* "Chess" (a firm).

Crossman, J. 26th May, 1939.

TRADE MARK—CHESSMAN—NAME—AMBIGUITY—ADVERTISEMENT FOR SALE—WORD "GENUINE" ADDED—ACTION FOR PASSING OFF.

Since about 1849 the plaintiffs or their predecessors had made sets of chessmen of the "Staunton" design. Some games dealers and chess players at the present time regarded the name as indicating chessmen manufactured by the plaintiffs while others regarded it as indicating chessmen of a particular pattern. In 1937 the defendants published an advertisement: "Genuine Staunton chessmen. Highest quality . . . We are prepared to stake our reputation on the statement that these sets are identical with those offered by the best dealers in the trade at prices 20 per cent. to 50 per cent. higher . . ." The plaintiffs now sought to restrain the defendants from passing off sets of chessmen not of the plaintiffs' manufacture as and for the plaintiffs' chessmen.

CROSSMAN, J., said that the plaintiff to succeed had to prove "that any name which he claims as a trade name has been so exclusively used in connection with his manufacture, or with the goods which he sells, that his goods have come to be known in the market by that name; that anyone using that name would intend to refer to his goods and that anyone to whom the name was used would understand that his goods were referred to" (*Leahy, Kelly & Leahy* v. *Glover*, 10 R.P.C., at p. 155; see also *Spalding* v. *Gamage, Ltd.* (*No.* 2), 84 L.J. Ch., at p. 449). The meaning of the word "market" here must be limited to the chess-playing public. The market to be considered was the general market—not only the chess-playing public but also the dealers in chessmen. The plaintiffs had not established that in the market as a whole the name "Staunton" denoted chessmen made by the plaintiffs and they were not entitled to stop the defendants using that word alone in connection with chessmen. But just as in *Havana Cigar & Tobacco Factories, Ltd.* v. *Oddenino* [1924] 1 Ch. 179, it was found that the word "Corona" applied to cigars was ambiguous, sometimes meaning a cigar made by the plaintiffs and sometimes one of a particular shape or size, so to a considerable number of traders "Staunton" meant chessmen made by these plaintiffs, but to chess players generally it meant chessmen of a particular design. The word "genuine" in the circumstances attached to the word "Staunton" was calculated to lead to the belief that the term was used to mean chessmen made by the plaintiffs, who were entitled to stop the defendants from describing their chessmen as "genuine Staunton."

COUNSEL: *Bray*, K.C., and *J. Mould; Silverman* and *V. Wolff.*

SOLICITORS: *Radford, Frankland & Mercer; Sparks, Russell, Isard & Co.*, for *W. R. Morry*, of Sutton Coldfield.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Cowan *v.* Hendon Borough Council.

Farwell, J. 21st June, 1939.

LOCAL GOVERNMENT—TOWN PLANNING SCHEME—CONSTRUCTION—PRIVATE CARRIAGE DRIVE—ACCESS TO BLOCK OF FLATS—WHETHER "STREET"—PUBLIC HEALTH ACT, 1875 (38 & 39 Vict. c. 55), s. 4.

Under the Hendon Town Planning Scheme No. 1 it was stated that "street" had the same meaning as in the Public Health Act, 1875, and included part of a street. By cl. 17: "Except in relation to streets proposed to be constructed by a highway authority the following provisions shall have effect with respect to new streets proposed to be constructed, whether on land reserved for streets or not." By cl. 17 (6): "The Council shall approve the plans, sections and specifications of the proposed street with or without modification, or disapprove them, and shall forthwith notify the applicant of their decision, but they shall not approve a plan, section or specification which is contrary to any bye-law or local Act, except that they may in proper cases permit—(*a*) the laying out or making of a new street not likely to be used generally for through traffic, if it is of one of the types described in the first schedule to this scheme or of a substantially similar type or a street of such other type as the Minister may from time to time approve; (*b*) the temporary laying out or making of a new street of less width, or with narrower carriageways and footways, than authorised by them in approving the street." By cl. 17 (7): "As soon as the street is made in accordance with the plans, sections and specifications approved under this clause, the Council shall, on the application in writing of the person making the street, and within three months from the date thereof, post a notice in the street declaring it to be, and the street shall thereupon become, a highway repairable by the inhabitants at large." By cl. 17 (9): "An applicant who is aggrieved by—(*a*) a decision of the Council under sub-cl. (6) in regard to (i) the plans or sections of the proposed street or (ii) the specifications of the proposed street . . . may appeal." By cl. 17 (10): "A person laying out or making a street shall lay it out or make it in accordance with the plans, sections and specifications approved under this clause, and all conditions applicable thereto contained in the first schedule to this scheme or in the approval shall be binding on him." The schedule provided for the dimensions and conditions required by cl. 17 (6) (*a*). Type C was "applicable only to streets intended to give access solely to buildings forming three sides of a quadrangle or arranged in some other similar manner so as to front on to any open space." Type D was "applicable only to streets intended for use as a secondary means of access to premises for the purpose of the removal of house refuse and other matters." Type E was "applicable only to streets not intended for use as carriageways." It was stated that: "The street shall not without the consent of the Council be used as a principal means of approach to any buildings." The plaintiff owned half an acre of land behind certain houses on a main road. He also owned a strip of land connecting it with the road about 100 feet long and varying in width from 13 feet to 20 feet. The plaintiff obtained the approval of the defendant Council for the plans of a building containing six flats to be erected on the land. He also wished to use the connecting strip of land for making a carriageway bordered with trees or shrubs as a means of access for the persons occupying the flats and persons desiring to go there. Its width would be less than that required by the town planning scheme if it was a "street." It could only be widened either by encroaching on the gardens of a house on one side or by partially demolishing a house belonging to the plaintiff on the other side. The plaintiff sought a declaration that the proposed means of access was not a "new street" within cl. 17 and that the Council were not entitled to reject the plans for it.

FARWELL, J., referred to the definition of a "street" in the Public Health Act, 1875, s. 4, and said that here the word was used in a more extended meaning than it usually bore. The plaintiff contended that this way would only be a carriageway. The defendants contended that it would be a street which would be used by the occupiers of the flats and any other persons having occasion to go there. They said that it was essential that they should have control over such a way and that it was not simply a carriageway. His lordship held that the strip when made up and used as proposed would be a "street," and said that in drawing the line between what was and what was not a "street" it was a question of construction and a matter of degree having regard to all the circumstances. The action should be dismissed with costs.

COUNSEL: *M. Rowe; E. Holland.*

SOLICITORS: *Boxall & Boxall*, for *Edwin Boxall & Kempe*, of Brighton; *Leonard Worden.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### East Barnet U.D.C. *v.* Stacey and Others.

Lord Hewart, C.J., Humphreys and Lewis, JJ.
1st May, 1939.

PRIVATE STREET WORKS—ALTERATION TO STREETS—WHETHER CONSEQUENTIAL ALTERATIONS TO GULLIES AND CONNECTIONS WITH SEWER AN EXPENSE TO BE BORNE BY FRONTAGERS.

Appeal by case stated from a decision of Barnet justices.

Objection was raised by the respondents, the owners of certain premises, to a proposal made by the appellant council to level, pave, metal and do other work to certain private streets. Provisional apportionments of the estimated cost of the works having been duly made, the respondents objected to them on the ground that the cost of providing new gullies and/or altering the position of existing ones and of alterations in the levels of the streets should be charged, not to the frontagers, but to the ratepayers of the district. On the hearing of the objections, the following facts were proved or admitted. Any alteration in width of the roads necessarily involved realignment of the gullies situated at various points at the edge of the roads as existing, and connection by pipes of the realigned gullies to the existing connections with the surface-water sewers in the streets. Further, the existing gullies were insufficient in number, and additional ones, with connections, were necessary. It was contended for the council that, with regard to the provision of new and additional gullies, they were entitled to require them as part of the works which they were empowered to carry out under the Private Street Works Act, 1892, and that, therefore, the whole expense incurred in connection with them ought to be borne by the frontagers. It was contended for the respondents that the gullies and connecting pipes were, and had always been, part of the drainage system, and that they formed no part of the carriageways of the streets; and that, by their approval of the plan according to which the streets and gullies were laid out, the appellants had precluded themselves from claiming from the frontagers the cost of improved or additional gullies and connections. The justices decided in favour of the respondents, and ordered the necessary deletions from the provisional apportionment.

LORD HEWART, C.J., said that the respondents' real contention was that the gullies and their connections, properly regarded, were part of the sewer system, and that the expenses relating to them ought therefore to be borne by the ratepaying body as a whole. The appellants argued, on the other hand, that the expenses in question were in connection with the making up of the street—relating, not to the sewer which ran down the main road, but to the supply to that sewer of the individual contributions, whether from the adjoining houses or from the surface of the street. Light was thrown on the matter by the view expressed (not approved and confirmed, yet not dissented from, by the other members of the court) by Lord Alverstone, C.J., in *Wandsworth Borough Council* v. *Golds* [1911] 1 K.B. 60, at p. 67, where he said that, speaking for himself, he would have great difficulty in coming to the conclusion that the construction of a gully was part of either the paving or the formation of the road. Lord Alverstone in that case refrained from expressing a concluded opinion. The difference to be borne in mind was that between what might be called the system of subterranean drainage on the one hand, and the paving of the road and matters immediately connected with it on the other hand. There might be much to say on both sides, but, as matters stood, he (his lordship) was not prepared to say that the justices had come to a wrong conclusion in law. The appeal must be dismissed.

COUNSEL: *Erskine Simes: Robert Fortune.*

SOLICITORS: *Lees & Co.; H. H. Kemp.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Wilson *v.* Mitchell.

Finlay, L.J. (sitting as an additional judge). 5th May, 1939.

SURETY—CONTRACT FOR HIRE-PURCHASE OF MOTOR CAR—TWO GUARANTORS—DEFAULT OF PURCHASER—ACTION BY VENDOR AGAINST GUARANTORS—SUBMISSION TO JUDGMENT BY FIRST SURETY—ACTION STAYED AGAINST SECOND SURETY—SUBSEQUENT CLAIM BY FIRST AGAINST SECOND SURETY FOR CONTRIBUTION—DEFENCE OF BREACH OF WARRANTY—WHETHER AVAILABLE IN ABSENCE OF PRINCIPAL DEBTOR FROM PROCEEDINGS.

Action tried by Finlay, J., without a jury.

In May, 1932, a company called D. W. Mitchell & Co., Ltd., entered into an agreement with a finance corporation whereby the company were to acquire a motor car by hire-purchase. The car was in the first place supplied to the finance corporation by another company, called E. Boydell & Co., Ltd. The plaintiff and the defendant, who were both directors of D. W. Mitchell & Co., Ltd., guaranteed the discharge by that company of the instalments due under the hire-purchase agreement, which agreement contained no express warranty with regard to the condition of the car. In March, 1933, the finance corporation assigned their rights under the hire-purchase agreement to E. Boydell & Co., Ltd.; D. W. Mitchell & Co., Ltd., and the two guarantors were notified of the assignment. In April, 1933, the instalments being in arrear, E. Boydell & Co., Ltd., sued both guarantors. There was a counter-claim in respect of the alleged condition of the car, but the present plaintiff submitted to judgment, the action against the present defendant being stayed owing to his insolvency. Five years later the plaintiff brought the present action against the defendant as his co-guarantor for contribution. The defendant pleaded in defence the claim for damages based on the breach of warranty alleged against E. Boydell & Co., Ltd., as vendors of the car through the corporation. The plaintiff contended that, in the absence from the proceedings of the principal debtor, that defence was not available to the defendant.

FINLAY, L.J., said that it was quite possible that if the counter-claim available to the principal debtor had been pressed at the material time, a reduction of the guaranteed debt might have been obtained, but the question was whether that counter-claim afforded any defence to the present claim. It was obvious that when E. Boydell & Co., Ltd., sued D. W. Mitchell & Co., Ltd., on the hire-purchase agreement the counter-claim, if any, was against them not as owners but as alleged suppliers of a defective machine. Between E. Boydell and Co., Ltd., and either D. W. Mitchell & Co., Ltd., or the two guarantors there was no contractual relationship, for they sued merely as assignees of the hire-purchase agreement. Cases like *Eshelby* v. *Federated European Bank* [1932] 1 K.B. 423 did not seem to help. It was impossible

to say that the defendant had made a good answer to the plaintiff's claim. The cross-claim for damages could not be prayed in aid by a guarantor in an action on the guarantee. If it could be prayed in aid by him, however, it could certainly not be done without joining as a party the principal debtor in whom the claim really rested. The matter was discussed at some length in Rowlatt on "Principal and Surety" (3rd ed., p. 139); and two American cases, *Gillespie* v. *Torrance*, 25 N.Y. 306, and *Newton* v. *Lee*, 139 N.Y. 332, there cited, seemed to support the present decision. There must be judgment for the plaintiff.

COUNSEL: *Gilbert Paull*, K.C., and *J. C. Goldie; Platts-Mills.*

SOLICITORS: *Humphrey Razzall & Co.; James R. White and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### R. *v.* Rotherham Licensing Justices; *ex parte* Chapman.

Lord Hewart, C.J., Humphreys and Lewis, JJ.
5th May, 1939.

LICENSING—OCCASIONAL LICENCE—FORMULATION OF RULE BY JUSTICES LIMITING NUMBER OF OCCASIONAL LICENCES TO BE GRANTED TO ONE ORGANISATION IN A YEAR—RULE FETTERING DISCRETION OF JUSTICES WITH REGARD TO INDIVIDUAL CASES—VALIDITY—LICENSING (CONSOLIDATION) ACT, 1910 (10 Edw. 7 and 1 Geo. 5, c. 24), s. 64.

Application for an order of *mandamus*.

The applicant was a licensed victualler carrying on business at a hotel in Sheffield. For some years he had from time to time applied to the licensing justices for the Borough of Rotherham for occasional licences to sell intoxicating liquors in respect of dances and other entertainments organised by the social services of a certain company. The applications had always been granted. On the 24th November, 1938, the licensee applied to the justices for an occasional licence, and was informed by their chairman that the justices had decided on a new rule which was to be of general application, namely, that the number of occasional licences granted to the same promoters should not exceed two in any one year, and that an interval of at least three months must elapse between the granting of any two such licences. The application of 24th November was made the subject of an exception to the rule which had been adopted by the justices, and was granted. On the 19th January, 1939, another application was made by the applicant for the present order with regard to a dance to be held on the 2nd March. He submitted that the so-called new rule was illegal and ought to be no bar to his application, and that the justices were bound to hear and determine the application in accordance with law. Having heard that evidence the justices heard no opposition from the police or other parties, but nevertheless refused the application without stating any reasons. The chairman of the justices stated, in an affidavit, that the rule adopted was that, in considering applications for occasional licences, the justices should seriously challenge the existence of special circumstances whenever an application was made on behalf of the same organisation on more than two occasions in any period of twelve months. On the other hand, the chairman swore that at no time did he and his colleagues agree to exclude from their consideration the existence of exceptional circumstances. The present application was accordingly made for an order of *mandamus* to be directed to the justices, on the grounds that the rule adopted by the justices was illegal, and that they were bound to hear and determine the application of the 19th January according to law.

LORD HEWART, C.J., referred to s. 64 of the Licensing (Consolidation) Act, 1910, and said that it was clear that the justices did prescribe for themselves a rule which was to define for the future the limits within which applications for an occasional licence would alone be granted. They appeared to have come to the conclusion that, where an application was made with reference to a particular organisation, they were entitled to say beforehand in a stereotyped formula: "There shall be no more than two in any one year, and, with regard to those two, there shall be an interval of three months at least between one and the other." Justices might prescribe to themselves such a general rule as a counsel of perfection, but here the rule itself seemed plainly designed to prevent the application of an unfettered judgment to the individual case. That was an abdication of the justices' duty impartially to consider on the particular facts the merits of each individual application. No doubt the justices had come to the conclusion that there were too many applications of the kind, and that they should regard with a jealous and careful eye all such applications, but it was one thing to have that frame of mind, and another to lay down a rule or principle which provided in advance the opportunity of declining jurisdiction in a particular case. The order applied for must be granted.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *Willoughby Jardine*, K.C., and *Clive Salter*, for the applicant; *Christmas Humphreys*, for the justices.

SOLICITORS: *Jackson & Jackson*, for *J. W. Fenoughty, Dunn and Co.*, Rotherham; *Sharpe, Pritchard & Co.*, for the *Town Clerk, Rotherham.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Howells *v.* Inland Revenue Commissioners.

Lawrence, J. 8th May, 1939.

REVENUE—INCOME TAX—MORTGAGE INTEREST—MORTGAGEE SOLICITOR TO MORTGAGOR—SALE OF PROPERTY BY MORTGAGOR—RECEIPT OF PROCEEDS BY MORTGAGEE AS SOLICITOR—ACCOUNT OF PROCEEDS TO MORTGAGOR—DEDUCTION BY MORTGAGEE OF SUM DUE TO HIMSELF AS INTEREST—PART OF SUM SO PAID BY MORTGAGOR NOT COVERED BY MORTGAGOR'S PROFITS CHARGED TO TAX—ASSESSMENT ON MORTGAGEE IN RESPECT OF THAT PART OF SUM PAID—WHETHER VALID—WHETHER MORTGAGEE A PERSON "BY OR THROUGH WHOM" PAYMENT MADE BY MORTGAGOR—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), General Rules applicable to all Schedules, r. 21 (1).

Appeal by Case Stated from a decision of the Commissioners for the special purposes of the Income Tax Acts.

The appellant, T. Vincent Howells, a practising solicitor, advanced various sums by way of mortgage to a builder on the security of his property. In January, 1935, the appellant acted as the mortgagor's solicitor in the sale of two houses, and received the purchase-money in that capacity. He then rendered the mortgagor an account, paying him the amount of the proceeds of sale after deduction of various sums, including the interest which the mortgagor then owed him. The total amount retained by the appellant in payment of interest, due to himself as mortgagee, out of the proceeds of sale of the mortgagor's properties was £285 13s. 9d., after deduction of tax at the appropriate rate due by the appellant. The gross amount of interest paid by the mortgagor corresponding to the figure £285 13s. 9d. was £368 12s. 7d. Of that sum, £199 9s. 4d. was treated as covered by profits or gains of the mortgagor which had been brought into charge to tax, leaving a balance of £169 3s. 3d. not so treated. An assessment of the year 1934–35 was raised on the appellant in respect of that sum under r. 21 of the General Rules applicable to all Schedules to the Income Tax Act, 1918, as representing interest paid under deduction of tax otherwise than out of profits or gains brought into charge to tax, the appellant being assessed as the person "by or through whom" the payment of interest was made within the meaning of sub-s. (1) of the rule. On appeal from that assessment to the Special Commissioners, it was contended for the appellant (1) that in retaining interest due to him he was intervening as mortgagee and was not acting as solicitor for the mortgagor

or otherwise on his behalf; and (2) that the payment of interest had been made by the mortgagor to the appellant without any intermediary, and that the appellant was not a person by or through whom the payment had been made within the meaning of the rule. The Commissioners held that the retention of interest was an action of the appellant who, as the mortgagor's solicitor, had in his hands funds proceeding from the sale of the mortgagor's property, and that in those circumstances, although the appellant was the person to whom, as mortgagee, the payment was made, he was none the less a person through whom payment was made within the meaning of r. 21. They therefore dismissed the appeal.

LAWRENCE, J., said that it was argued for the Crown that r. 21 was a collecting enactment which must be construed liberally, reference being made to *Drummond* v. *Collins*, 6 T.C. 25. The rule, it was argued, might refer to the same person in two different capacities. Where a trustee was also a beneficiary, if funds came into his hands and he paid them to himself as beneficiary, he was a person by whom a payment was made. He (his lordship) agreed with the Commissioners' view. The appellant received the money as the mortgagor's solicitor, and, in appropriating it as mortgagee to his own debt from the mortgagor, he was the person through whom the money was paid to the mortgagee. The appeal must be dismissed. A reduction of the assessment was agreed between the parties on the basis that the appellant was not the person through whom payment had been made of the sum deducted for tax.

COUNSEL: *F. Heyworth Talbot; The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills.*

SOLICITORS: *T. Vincent Howells; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### New System Private Telephones (London), Ltd. *v.* Edward Hughes & Co.

Singleton, J. 10th May, 1939.

CONTRACT—FRUSTRATION—HIRE OF INTERNAL TELEPHONE INSTALLATION—DESTRUCTION OF PREMISES AND INSTALLATION BY FIRE—RIGHTS OF PARTIES.

Action claiming a sum of money alleged to be due under an agreement.

The plaintiff company let on hire to the defendant firm an internal telephone installation for the defendants' premises. The contract of hire was in writing and provided that the defendants should pay a quarterly rent in advance and that the hire should last for fourteen years; that the installation should remain the plaintiff company's property and that they should maintain it in good order; by cl. 6, that the defendant firm should be responsible for loss of or damage to it, each of the six instruments being expressly valued at £15; that the defendant firm was entitled to have the installation transferred by the plaintiff company to other premises at their (the defendant firm's) expense; and that the plaintiff company should have access to the defendant firm's premises for the inspection and repair of the installation. It was further provided, by cl. 11, that, in case of default by the defendant firm in observing the terms of the contract, the plaintiff company might terminate it and the defendant firm would become liable to pay the plaintiff company as liquidated damages a sum calculated by reference to the rents which would have been payable during the rest of the term of the contract if it had not been terminated. The defendant firm's premises, together with the installation, having been destroyed by fire without default on their part, the defendant firm contended that the contract had come to an end, paid no further rent, but tendered to the plaintiff company £90 under cl. 6. They then proceeded to carry on their business at different premises, where they required no internal telephone system. The plaintiff company now sued for the sum fixed by the agreement as liquidated damages.

SINGLETON, J., said that the plaintiff company contended that the rent of the installation would continue to run for the remainder of the fourteen years; and that, there being default in the payment of rent, they were entitled to apply cl. 11. The defendant firm contended that the contract should be regarded as at an end through the destruction of the premises. They argued that it was an implied term of the contract that the premises should continue in existence; that, once the premises were destroyed, the object of the contract was rendered commercially impracticable; and that the defendant firm was accordingly excused from further liability under it except to pay £90 for the six lost instruments. It was argued for the plaintiff company that no such condition should be implied, and that the contract did not provide that the instruments were necessarily to be at one set of premises all the time. The principle on which to approach the matter was stated by Blackburn, J., in *Taylor* v. *Caldwell*, 3 B. & S. 826, at p. 833, and rested on an implied condition in the contract that the parties should be excused from further performance under it in certain events. Clause 6 of the present contract showed that the parties contemplated the possibility of destruction of the installation by fire, and yet they nowhere provided that on such an event the contract should be considered at an end. In view of the provision for transfer of the installation at the hirer's option, it was necessary to hold that other premises were contemplated than those referred to in the contract. Counsel for the defendant firm referred to *Horlock* v. *Beal* [1916] 1 A.C. 486, at p. 512, where Lord Shaw of Dumferline considered *Taylor* v. *Caldwell*, *supra*. Lord Shaw said: "the underlying *ratio*" [of the principle] "is the failure of something which was at the basis of the contract in the mind and intention of the contracting parties." That failure was not to be found in the present case, and the plaintiff company must accordingly be awarded damages in accordance with cl. 11.

COUNSEL: *H. J. Wallington*, K.C., and *E. R. Guest; Cecil Havers*, K.C.

SOLICITORS: *Phœnix, Levinson, Walters & Shane; Charles G. Bradshaw & Waterson.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division.

### Terry *v.* Terry.

Hodson, J. 22nd, 27th and 28th June, 1939.

DIVORCE—DESERTION—JUSTICES' ORDER—COMPUTATION OF THREE YEARS' PERIOD—ISSUE OF SUMMONS TERMINAL DATE—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 6 (3).

In this wife's undefended petition for divorce on the ground of desertion, where there had been a previous separation order, the court had to consider the question whether the words "institution of proceedings" in s. 6, subs. (3), of the Matrimonial Causes Act, 1937, meant the date of the issue of the summons or the date of service or the date of the subsequent order.

HODSON, J., in giving judgment, said that on 3rd February, 1937, the petitioner obtained an order in the court of summary jurisdiction on the ground of desertion directing, *inter alia*, that she should be no longer bound to cohabit with her husband, the respondent to this petition. The summons was issued on 28th January, on a printed form containing the following words: "Wherefore your wife, pursuant to the statute in that case made and provided, applies that an order may be made that she be no longer bound to cohabit with you." The summons was served on 30th January, 1937. By the Matrimonial Causes Act, 1937, s. 6 (3), the period of desertion immediately preceding the institution of proceedings for an order under the Summary Jurisdiction Acts "shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation

of the petition for divorce." The question arose in the present case whether or not the desertion which had preceded the separation order had extended for three years immediately preceding the institution of those proceedings. It had been argued that the section should be read as if the date of the order were the terminal date which concludes the period, but, on the true construction of the section, he (his lordship) thought that the date of the institution of the proceedings was the material date. It was true that the mere issue of the summons was nugatory until it was brought to the notice of the respondent by service, and did not suspend the obligation to cohabit, as Henn Collins, J., decided in *Gibbs-Smith* v. *Gibbs-Smith* [1939] P. 170; 83 SOL. J. 260. In that case, Henn Collins, J., was considering the effect of a petition for divorce in the High Court. However, the words of the statute were plain, and he (his lordship) thought that the date of the summons must be taken to be the date of the institution of the proceedings. The commencement of desertion was in this way. In October, 1933, the respondent said that he would prefer to live with his mother, and left his wife against her will. She saw him repeatedly, and asked him to reconsider his decision. At Christmas, 1933, she rejoined him at his mother's house for a period which it has been difficult to ascertain with accuracy. The petitioner, however, had given evidence that they were together there until about 27th January, 1934. She fixed the date as being about four days before her father had purchased a business, which it was intended should be run by the petitioner and the respondent, in conjunction with her father and mother, at Kingston. The father and mother took over the business on 1st February or 2nd February, 1934. The petitioner left the house of the respondent's mother as she did for the purpose of going home to pack up, and, when she left, she was under the impression, given to her by her husband, that he was going to join her at the shop at Kingston on the date arranged. He never did so, notwithstanding her request by letter, and they never lived together again. The business was given up within a few weeks, and on 10th June, 1934, the husband wrote to his wife finally declaring his intention not to return to her any more. The terminal date from which desertion must commence was at the latest, 28th January, 1934, and therefore the date on which the husband failed to arrive at the new business, as promised, was too late to come within the period of three years. He (his lordship) was satisfied, however, from the conduct of the respondent, that he never really intended to rejoin his wife, and that desertion commenced from the time when she left his mother's house, on 27th January or 28th January, 1934, to pack up her things with a view to settling in the new home. The law took no account of part of a day for such a purpose as this, and desertion for a period of three years, therefore, was complete on 27th January, 1937, the day before the issue of the summons. In the circumstances, desertion had been proved, and there would be a decree *nisi*.

COUNSEL: *Leslie Brooks.*

SOLICITORS: *Kingsford, Dorman & Co.*, agents for *Weigall and Inch*, Margate.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

# Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

## Conveyancing Costs.

Sir,—The question of solicitor's conveyancing costs is really very simple. An Act of Parliament should be passed embodying maximum and minimum scale fees. No solicitor should in any circumstances accept less than the minimum. After all, people who have houses to sell and people who buy houses cannot plead poverty. People buy and sell houses according to their necessities and means and these would be taken into account by maximum and minimum scales. If a builder sells a hundred houses to a hundred different purchasers his solicitor should not be allowed to charge less than the minimum scale fee in each case. It is only in litigation cases—suing and being sued—that non-ability to pay costs can be pleaded, and here the Poor Persons Rules apply.

Beckenham, G. W. R. THOMSON.
18th July, 1939.

# Obituary.

MR. D. S. DANNREUTHER.

Mr. Denis Sigmund Dannreuther, Barrister-at-Law, of Harcourt Buildings, Temple, E.C., died on Monday, 17th July at the age of thirty-five. Mr. Dannreuther was educated at Eton and Balliol College, Oxford, and was called to the Bar by Gray's Inn in 1927. He joined the Western Circuit and later became a member of the staff of the Parliamentary Drafting Office. He recently joined the legal department of the London and North Eastern Railway.

MR. A. E. AITKEN.

Mr. Arthur Eastham Aitken, solicitor, a partner in the firm of Messrs. Easthams & Ramsbottom, of Clitheroe, died on Saturday, 15th July, at the age of fifty. Mr. Aitken, who was admitted a solicitor in 1910, was Clerk to Clitheroe Rural Council.

MR. A. E. HABGOOD.

Mr. Alfred Ernest Habgood, solicitor, of Bristol, died on Tuesday, 11th July, at the age of seventy-six. Mr. Habgood was admitted a solicitor in 1885 and practised for a number of years at Portishead and Weston-super-Mare before going to Bristol.

COL. W. J. PERKINS.

Colonel William Jackson Perkins, C.M.G., V.D., D.L., solicitor, senior partner in the firm of Messrs. Perkins & Harris, of Guildford, died at Woking on Friday, 14th July, at the age of eighty-one. He was admitted a solicitor in 1881 and was awarded The Law Society's Prize.

MR. H. T. SALES.

Mr. Harry Thomas Sales, solicitor, of Stockport, died on Monday, 10th July, at the age of fifty-five. Mr. Sales served his articles with Messrs. Grundy, Kershaw & Co., of Manchester, and was admitted a solicitor in 1918.

# Societies.

## Gloucestershire & Wiltshire Incorporated Law Society.

The annual meeting of the Gloucestershire and Wiltshire Incorporated Law Society was held on the 12th July, under the chairmanship of the Vice-President, Mr. G. Trevor Wellington, of Gloucester. The President, Mr. E. Sant, of Salisbury, was unable to be present owing to indisposition. There were fifty-three members present. After the minutes of the last annual meeting had been read and confirmed, the annual report and accounts were received and adopted. Mr. Gilbert Trevor Wellington, of Gloucester, was elected President, and Mr. Charles Ewart Jeens, of Cheltenham, Vice-President, for the ensuing year. The General Committee, Library Committee and Poor Persons Cases Committee were appointed. Charitable grants amounting to £21 were voted, and also a donation of £21 to the funds of the Solicitors' Benevolent Association. The membership of the Society is now 173.

## Law Association.

The usual monthly meeting of the directors was held on the 3rd July, Mr. Ernest Goddard in the chair. The other directors present were Mr. Guy H. Cholmeley, Mr. G. D. Hugh-Jones, Mr. C. D. Medley, Mr. John Venning, Mr. F. M. Welsfield, Mr. William Winterbotham and the Secretary, Mr. Andrew H. Morton. A sum of £110 was voted in relief of deserving applicants and other general business was transacted.

## Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 5th July. Mr. Harvey F. Plant, M.C., was in the chair, and the following Directors were present: Mr. Henry White, M.A., Vice-Chairman (Winchester), Mr. G. C. Blagden, M.A., LL.B., Mr. P. D. Botterell, C.B.E., Mr. E. Bramley, M.A., LL.D., J.P. (Sheffield), Miss Mary Brown (Grimsby), Mr. G. K. Buckley (Preston), Mr. R. Bullin, T.D., J.P. (Portsmouth), Mr. A. J. Cash (Derby), Sir Edmund Cook, C.B.E., LL.D., Mr. T. G. Cowan, Mr. C. H. Culross, Mr. T. S. Curtis, Sir Norman Hill, Bart., Mr. C. W. Lee, J.P., Mr. C. G. May, Mr. A. R. Moon, LL.B. (Manchester), Mr. F. J. Morse, Mr. W. N. Riley, M.A. (Brighton), Mr. F. L. Steward, M.A. (Wolverhampton). £2,203 17s. 5d. was distributed in grants to necessitous cases and thirty-three new members were admitted. The Annual General Meeting of the Association will be held at the New Town Hall, at Worthing, on Wednesday, the 27th September, at 9.45 a.m.

# Parliamentary News.

## Progress of Bills.

### ROYAL ASSENT.

The following Bills received the Royal Assent on 13th July :—

Access to Mountains.
Adoption of Children (Regulation).
Bognor and District Gas and Electricity.
Charities (Fuel Allotments).
Civil Defence.
Coast Protection.
Croydon Corporation.
Droitwich Canals (Abandonment).
Dundee Corporation Order Confirmation.
Dundee Harbour and Tay Ferries (Superannuation) Order Confirmation.
Hall-marking of Foreign Plate.
Jarrow Corporation.
Local Government Amendment (Scotland).
London County Council (Money).
London Government.
Marriage.
Marriage (Scotland).
Marriages Validity.
Merthyr Tydfil Corporation.
Milford Haven and Tenby Water.
Ministry of Health Provisional Order Confirmation (Burnham and District Water).
Ministry of Health Provisional Order Confirmation (Congleton).
Ministry of Health Provisional Order Confirmation (Corsham Water).
Ministry of Health Provisional Order Confirmation (Hailsham Water).
Ministry of Health Provisional Order Confirmation (Heywood and Middleton Water Board).
Ministry of Health Provisional Order Confirmation (Luton Water).
Ministry of Health Provisional Order Confirmation (Margate).
Ministry of Health Provisional Order Confirmation (Matlock).
Ministry of Health Provisional Order Confirmation (Newhaven and Seaford Water).
Ministry of Health Provisional Order Confirmation (Oxford).
Ministry of Health Provisional Order Confirmation (Slough).
Ministry of Health Provisional Order Confirmation (South Kent Water).
Ministry of Health Provisional Order Confirmation (Swaffham Water).
Ministry of Health Provisional Order Confirmation (York Water).
Ministry of Supply.
North West Midlands Joint Electricity Authority Order Confirmation.
Oswestry Corporation.
Patents and Designs (Limits of Time).
St. Helen's Corporation (Trolley Vehicles) Order Confirmation.
Saint Peter's Chapel Stockport.
Sea Fisheries (Tollesbury and West Mersea) Order Confirmation.
South Shields Corporation (Trolley Vehicles) Order Confirmation.
South Staffordshire Waterworks.
Southend-on-Sea Corporation (Trolley Vehicles) Order Confirmation.
Southern Railway.
Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board.
Stroud District Water Board, etc.
Sunderland Corporation.
Tiverton Corporation.
Tynemouth Corporation.
Unemployment Insurance.
Wheat (Amendment).

## House of Lords.

Agricultural Development Bill.
Read First Time. [19th July.
Air Ministry (Heston and Kenley Aerodromes Extension) Bill.
Read First Time. [13th July.
Bristol Waterworks Bill.
Read Third Time. [18th July.
Colne Valley Water Bill.
Read Third Time. [13th July.
Cotton Industry (Reorganisation) Bill.
Read Second Time. [18th July.
Coventry Corporation Bill.
Reported, with Amendments. [19th July.
Finance Bill.
Read First Time. [17th July.
House to House Collections Bill [formerly "Charitable Collections (Regulation) Bill"].
Read Third Time. [18th July.
London Passenger Transport Board Bill.
Reported, with Amendments. [19th July.
Milk Industry (No. 2) Bill.
Read First Time. [17th July.
Mining Industry (Amendment) Bill.
Read Second Time. [18th July.
Ministry of Health Provisional Order (Eastern Valleys (Monmouthshire) Joint Sewerage District) Bill.
Amendments reported. [19th July.
Ministry of Health Provisional Order (Falmouth) Bill.
Read Third Time. [19th July.
Ministry of Health Provisional Order (Hemel Hempstead Water) Bill.
Read Third Time. [18th July.
Newquay and District Water Bill.
Read Third Time. [18th July.
Overseas Trade Guarantees Bill.
Read First Time. [19th July.
Port Glasgow Burgh and Harbour Order Confirmation Bill.
Read Third Time. [18th July.
Post Office and Telegraph (Money) Bill.
Read Third Time. [17th July.
Poultry Industry Bill.
Read Third Time. [19th July.
Public Trustee (General Deposit Fund) Bill.
Reported, without Amendment. [18th July.
Representation of the People (Publication of Register) Bill.
Second Reading negatived. [18th July.
Riding Establishments Bill.
Read Second Time. [18th July.
Sheffield Corporation Bill.
Reported, with Amendments. [19th July.
Stirling Burgh Order Confirmation Bill.
Read Third Time. [18th July.

## House of Commons.

Administration of Justice (Emergency Provisions) (Scotland) Bill.
Read First Time. [17th July.
Agricultural Development Bill.
Read Third Time. [18th July.
British Shipping (Assistance) Bill.
Read Second Time. [19th July.
Colne Valley Water Bill.
Lords Amendments agreed to. [17th July.
Falmouth Docks Bill.
Reported, with Amendments. [13th July.
Finance Bill.
Read Third Time. [13th July.
Highways Protection Bill.
Reported, with Amendments. [13th July.
House of Commons Members Fund Bill.
Read Second Time. [13th July.
London Building Acts (Amendment) Bill.
Reported, with Amendments. [19th July.
London County Council (General Powers) Bill.
Reported, with Amendments. [19th July.

Milk Industry (No. 2) Bill.
Read Third Time. [14th July.
Ministry of Health Provisional Order Confirmation (Bacup) Bill.
Read Third Time. [14th July.
Ministry of Health Provisional Order Confirmation (Bethesda) Bill.
Read Second Time. [13th July.
Ministry of Health Provisional Order Confirmation (Bradford) Bill.
Read Second Time. [19th July.
Ministry of Health Provisional Order Confirmation (North Lindsey Water Board) Bill.
Read Third Time. [14th July.
Ministry of Health Provisional Order Confirmation (Wembley) Bill.
Read Third Time. [14th July.
Ministry of Health Provisional Order (Hemel Hempstead Water) Bill.
Lords Amendment agreed to. [19th July.
National Trust for Places of Historic Interest or Natural Beauty Bill.
Reported, without Amendment. [13th July.
Overseas Trade Guarantees Bill.
Read Third Time. [18th July.
Poor Law (Amendment) Bill.
Read Second Time. [18th July.
Prevention of Damage by Rabbits Bill.
Reported, with Amendments. [13th July.
Prevention of Violence (Temporary Provisions) Bill.
Read First Time. [19th July.
Senior Public Elementary Schools (Liverpool) Bill.
Read Second Time. [18th July.
Southamptin Harbour Bill.
Reported, with Amendments. [13th July.
War Risks Insurance Bill.
Read Second Time. [17th July.
Water Supply Bill.
Amendments considered. [13th July.
West Gloucestershire Water Bill.
Reported, with Amendments. [19th July.
West Surrey Water Bill.
Amendments agreed to. [17th July.

# Rules and Orders.

THE MILITARY TRAINING (ADJUSTMENT OF CONTRACTS) REGULATIONS, 1939, DATED JUNE 30, 1939, MADE BY THE MINISTER OF LABOUR UNDER THE MILITARY TRAINING ACT, 1939 (2 & 3 GEO. 6, c. 25).

The Minister of Labour by virtue of the powers conferred on him by section seven of the Military Training Act, 1939, and of all other powers in that behalf hereby makes the following Regulations :—

*Short title commencement and interpretation.*

1.—(1) These Regulations may be cited as the Military Training (Adjustment of Contracts) Regulations, 1939, and shall come into force on the date hereof.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations unless the context otherwise requires :—

" the Act " means the Military Training Act, 1939 ;

" training " means training to which section seven of the Act applies.

*Adjustment of contracts of service or apprenticeship.*

2. Where a contract of service or apprenticeship is in force between an employer and an employee when the employee is called up for training then

(*a*) if an arrangement has been or is entered into between the parties to the contract, or if the contract makes provision, for any of the following purposes, that is to say,

(i) for dealing with all or any of the obligations of the parties thereunder in respect of the period of training ; or

(ii) for the reckoning of the period of service or apprenticeship in relation to the period of training ; or

(iii) for the adaptation of the terms of the contract in relation to any extension of the period of service or apprenticeship ;

the provisions contained in paragraph (*b*) hereof shall apply only in so far as they are not inconsistent with the arrangement or provision so made as aforesaid :

(*b*) if no such arrangement has been or is entered into or no provision made by the contract or to the extent that any such arrangement or provision does not deal with the obligations hereinafter specified or with the reckoning or the adaptation referred to in sub-paragraphs (ii) and (iii) of paragraph (*a*) of this Regulation, then

(i) the parties to the contract shall in respect of the period of training be relieved of all their obligations under the contract which relate to the following matters, that is to say, the payment of remuneration, the performance of work, or the provision of work, maintenance (including medical or surgical treatment) or instruction ;

(ii) the said obligations shall (unless otherwise dealt with by any arrangement or provision as aforesaid) be of full effect as from the date upon which the employee resumes his work, and where the contract is for a period specified or ascertainable from it, the period of service or apprenticeship thereunder shall be extended by a period equal to the period of the training or by a period equal to the period of the contract unexpired at the date of calling up if that period be less than the period of training ;

(iii) a period of service or apprenticeship (if any) remaining to be served under the contract apart from any period of extension shall be treated as beginning immediately on the resumption of work, and any period of extension shall be treated as the concluding period of the contract and the terms of the contract shall apply to that period of extension accordingly.

*Saving of Orders in Council etc.*

3. Nothing in these Regulations shall—

(*a*) affect the operation of the provisions contained in any Order in Council made under section eleven of the Act or under section four of the Reserve and Auxiliary Forces Act, 1939 ; or

(*b*) confer upon any employer authority to make any contract or arrangement with reference to the period of training which he is not authorised to make under any power already possessed by him.

Signed by order of the Minister of Labour this thirtieth day of June, 1939.

*T. W. Phillips,*
Secretary of the Ministry of Labour.

THE RESERVE AND AUXILIARY FORCES (ADJUSTMENT OF CONTRACTS) REGULATIONS, 1939, DATED JUNE 30, 1939, MADE BY THE MINISTER OF LABOUR UNDER THE RESERVE AND AUXILIARY FORCES ACT, 1939 (2 & 3 GEO. 6. c. 24).
[S.R. & O., 1939, No. 740. Price 1d. net.]

[NOTE.—The Reserve and Auxiliary Forces (Adjustment of Contracts) Regulations, 1939, are similar to the Military Training (Adjustment of Contracts) Regulations, 1939, which are set out above.—ED. *Sol. J.*]

# Legal Notes and News.

## Honours and Appointments.

The King has approved that Sir PHILIP JAMES MACDONELL be sworn of His Majesty's most honourable Privy Council. Sir Philip will be eligible to sit on the Judicial Committee of the Council. He was Chief Justice of Ceylon from 1930 until his retirement in 1936.

The King, on the recommendation of the Lord Chancellor, has approved the appointment of Mr. CONWAY JOSEPH CONWAY, K.C., as Deputy Chairman of the Buckinghamshire Quarter Sessions. The appointment is in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1938, and is to take effect from 4th July.

The King has approved recommendations of the Home Secretary that Mr. LAURENCE AUSTIN BYRNE be appointed Recorder of Rochester in the place of Mr. G. B. McClure, who has been appointed Recorder of Guildford ; and that Mr. GEORGE RAYMOND HINCHCLIFFE be appointed Recorder of Berwick-upon-Tweed in place of the late Mr. H. F. Manisty, K.C. Mr. Byrne was called to the Bar by the Middle Temple in 1918, and has been second senior counsel to the Treasury at the Central Criminal Court since 1937. He practises on the South-Eastern Circuit. Mr. Hinchcliffe was called to the Bar by the Middle Temple in 1924 and practises on the North-Eastern Circuit.

Mr. Justice N. J. DE WET, of the Appellate Division of the Supreme Court since 1932, has been appointed to succeed as Chief Justice of South Africa on the retirement of Chief Justice Stratford. He will be succeeded in the Appellate Division by Mr. Justice R. FEETHAM, Judge President of the Natal Provincial Division, of which Mr. F. N. BROOME, member of the House of Assembly for Pietermaritzburg District, has been appointed a Puisne Judge.

The Incorporated Council of Law Reporting have appointed Mr. R. E. L. VAUGHAN WILLIAMS, K.C., to be editor of the "Law Reports," in succession to His Honour Judge Topham, K.C., who retires from the editorship at the end of the year. Mr. Vaughan Williams was called to the Bar in 1893 by Lincoln's Inn, of which he is a Bencher. He is a member of the South Wales Circuit, and is Recorder of Cardiff. The Council have also appointed Mr. G. F. L. BRIDGMAN to be Assistant Editor of the "Law Reports." Mr. Bridgman, who was called to the Bar by the Middle Temple in 1912, has been a member of the King's Bench staff of the "Law Reports" since 1927.

Mr. BASIL MINOR, assistant solicitor in the firm of Messrs. Steavensons, Plant and Park, of Darlington, has been appointed assistant solicitor to Darlington Corporation, in succession to Mr. J. N. Stothert, now Deputy Town Clerk of Paddington. Mr. Minor was admitted a solicitor in 1936.

## Notes.

The Legal & General Assurance Society Ltd. announce that Mr. C. H. Huber, at present assistant manager of the Society's City office, has been appointed manager of the Manchester Branch as from the 24th July, 1939.

It is announced that the search rooms of the Public Record Office will this year be closed for cleaning purposes from 18th September to 23rd September, inclusive. Special arrangements will be made for the transaction of urgent legal business.

The Benchers of Gray's Inn entertained in Gray's Inn Gardens last Tuesday 1,300 children drawn from the Holborn elementary schools. Tea was served to the whole company in a marquee which covered the North Terrace. The treasurer, Mr. A. Andrewes Uthwatt, welcomed the guests.

A suggestion that jurors should have armchairs and desks was made by Mr. Justice Humphreys last week, says *The Times*. A witness had felt faint and his lordship directed the usher to put a chair into the witness-box, as the oak flap, which can be let down and used as a seat, has no back. "I cannot understand," said Mr. Justice Humphreys, "why it is thought that justice in this country can be better administered by making jurors and witnesses as uncomfortable as possible. Jurors should have armchairs instead of hard seats, and desks on which they can make whatever notes they wish, and room to stretch their legs. They are worse off than prisoners, who, in the dock, have plenty of room."

### SHORTHAND NOTES.

Some misunderstanding appears to have arisen as to whether, since the appointment in 1937 of Official Shorthand Writers to take notes of witness actions in the High Court, the Solicitor can make whatever copies are required, other than the three copies which have to be lodged with the Court of Appeal. An examination of the terms of appointment of the Official Writers makes it quite clear that the Solicitor can make any copies required for any other purpose in any way he pleases.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | MR. JUSTICE FARWELL. |
|---|---|---|---|
| | Mr. | Mr. | Mr. |
| July 24 | Jones | Ritchie | Reader |
| ,, 25 | Ritchie | Blaker | Andrews |
| ,, 26 | Blaker | More | Jones |
| ,, 27 | More | Reader | Ritchie |
| ,, 28 | Reader | Andrews | Blaker |

| | GROUP A. | | GROUP B. | |
|---|---|---|---|---|
| DATE. | MR. JUSTICE BENNETT. | MR. JUSTICE SIMONDS. Non-Witness. | MR. JUSTICE CROSSMAN. | MR. JUSTICE MORTON. Non-Witness. |
| | Witness. Mr. | Mr. | Mr. | Mr. |
| July 24 | Jones | Blaker | More | Andrews |
| ,, 25 | Ritchie | More | Reader | Jones |
| ,, 26 | Blaker | Reader | Andrews | Ritchie |
| ,, 27 | More | Andrews | Jones | Blaker |
| ,, 28 | Reader | Jones | Ritchie | More |

The LONG VACATION will commence on Saturday, the 29th day of July, 1939, and terminate on Monday, the 2nd day of October, 1939, inclusive.

## Stock Exchange Prices of certain Trustee Securities.

**Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 3rd August 1939.**

| | Div. Months. | Middle Price 19 July 1939. | Flat Interest Yield. £ s. d. | ‡ Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | | |
| Consols 4% 1957 or after .. .. | FA | 102 | 3 18 5 | 3 16 11 |
| Consols 2½% .. .. .. .. | JAJO | 66⅝ | 3 14 11 | — |
| War Loan 3½% 1952 or after .. | JD | 92⅝ | 3 15 5 | — |
| Funding 4% Loan 1960-90 .. .. | MN | 105½ | 3 15 10 | 3 12 6 |
| Funding 3% Loan 1959-69 .. .. | AO | 92½ | 3 5 0 | 3 8 4 |
| Funding 2¾% Loan 1952-57 .. | JD | 90½ | 3 0 9 | 3 9 5 |
| Funding 2½% Loan 1956-61 .. | AO | 84¼ | 2 19 4 | 3 10 11 |
| Victory 4% Loan Av. life 21 years | MS | 105 | 3 16 2 | 3 13 2 |
| Conversion 5% Loan 1944-64 .. | MN | 109½ | 4 11 4 | 2 14 0 |
| Conversion 3½% Loan 1961 or after | AO | 93¼ | 3 15 0 | — |
| Conversion 3% Loan 1948-53 .. | MS | 97½ | 3 1 8 | 3 5 0 |
| Conversion 2½% Loan 1944-49 .. | AO | 95½ | 2 12 4 | 3 0 7 |
| National Defence Loan 3% 1954-58 | JJ | 93½ | 3 4 2 | 3 9 5 |
| Local Loans 3% Stock 1912 or after | JAJO | 79 | 3 15 11 | — |
| Bank Stock .. .. .. .. | AO | 311 | 3 17 2 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after .. .. .. | JJ | 75 | 3 13 4 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after .. .. | JJ | 81 | 3 14 1 | — |
| India 4½% 1950-55 .. .. .. | MN | 106 | 4 4 11 | 3 16 5 |
| India 3½% 1931 or after .. .. | JAJO | 84 | 4 3 4 | — |
| India 3% 1948 or after .. .. | JAJO | 72 | 4 3 4 | — |
| Sudan 4½% 1939-73 Av. life 27 years | FA | 106 | 4 4 11 | 4 2 6 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 103½ | 3 17 4 | 3 12 3 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 103 | 3 17 8 | 3 13 9 |
| L.P.T.B. 4½% "T.F.A." Stock 1942-72 | JJ | 102½ | 4 7 10 | 3 8 7 |
| Lon. Elec. T. F. Corpn. 2½% 1950-55 | FA | 85½ | 2 18 6 | 3 13 2 |
| **COLONIAL SECURITIES** | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 95½ | 4 3 9 | 4 5 4 |
| Australia (Commonw'th) 3% 1955-58 | AO | 80½ | 3 14 6 | 4 11 1 |
| *Canada 4% 1953-58 .. .. | MS | 106½ | 3 15 1 | 3 8 2 |
| Natal 3% 1929-49 .. .. .. | JJ | 94½ | 3 3 6 | 3 14 8 |
| New South Wales 3½% 1930-50 .. | JJ | 90 | 3 17 9 | 4 13 8 |
| New Zealand 3% 1945 .. .. | AO | 86 | 3 9 9 | 6 2 1 |
| Nigeria 4% 1963 .. .. .. | AO | 105½ | 3 15 10 | 3 13 0 |
| Queensland 3½% 1950-70 .. .. | JJ | 87 | 4 0 6 | 4 5 6 |
| South Africa 3½% 1953-73 .. .. | JD | 95 | 3 13 8 | 3 15 3 |
| Victoria 3½% 1929-49 .. .. | AO | 91 | 3 16 11 | 4 12 11 |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after .. | JJ | 78 | 3 16 11 | — |
| Croydon 3% 1940-60 .. .. .. | AO | 89 | 3 7 5 | 3 15 4 |
| Essex County 3½% 1952-72 .. .. | JD | 96½ | 3 12 6 | 3 13 9 |
| Leeds 3% 1927 or after .. .. | JJ | 77 | 3 17 11 | — |
| Liverpool 3½% Redeemable by agreement with holders or by purchase.. | JAJO | 90 | 3 17 9 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 64 | 3 18 2 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 77 | 3 17 11 | — |
| Manchester 3% 1941 or after .. | FA | 76½ | 3 18 5 | — |
| Metropolitan Consd. 2½% 1920-49 .. | MJSD | 94 | 2 13 2 | 3 4 2 |
| Metropolitan Water Board 3% "A" 1963-2003 .. .. .. .. | AO | 81½ | 3 13 7 | 3 15 2 |
| Do. do. 3% "B" 1934-2003 .. | MS | 81½ | 3 13 7 | 3 15 4 |
| Do. do. 3% "E" 1953-73 .. .. | JJ | 90½ | 3 6 4 | 3 9 7 |
| *Middlesex County Council 4% 1952-72 | MN | 104 | 3 16 11 | 3 12 3 |
| * Do. do. 4½% 1950-70 .. .. | MN | 107 | 4 4 1 | 3 14 3 |
| Nottingham 3% Irredeemable .. | MN | 77 | 3 17 11 | — |
| Sheffield Corp. 3½% 1968 .. .. | JJ | 97 | 3 12 2 | 3 13 4 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | |
| Gt. Western Rly. 4% Debenture .. | JJ | 97½ | 4 2 1 | — |
| Gt. Western Rly. 4½% Debenture .. | JJ | 105 | 4 5 9 | — |
| Gt. Western Rly. 5% Debenture .. | JJ | 112½ | 4 8 11 | — |
| Gt. Western Rly. 5% Rent Charge .. | FA | 109½ | 4 11 4 | — |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 106½ | 4 13 11 | — |
| Gt. Western Rly. 5% Preference .. | MA | 90½ | 5 10 6 | — |
| Southern Rly. 4% Debenture .. | JJ | 97½ | 4 2 1 | — |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 102½ | 3 18 1 | 3 16 8 |
| Southern Rly. 5% Guaranteed .. | MA | 110 | 4 10 11 | — |
| Southern Rly. 5% Preference .. | MA | 96½ | 5 3 8 | — |

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.